

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32180
Docket No. CL-32533
97-3-95-3-432**

The Third Division consisted of the regular members and in addition Referee James E. Yost when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Delaware & Hudson Railway Company, Inc.)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11167) that:

I. The following claim is hereby presented to the Company in behalf of Claimants listed on Attachment ‘A’:

(a) The Carrier violated the Clerks’ Rules Agreement effective September 26, 1990, particularly Rules 1 (Scope), 4, 5, Appendix I and other Rules, when commencing on/or about July 1, 1993, 24 hours a day, 7 days per week the Carrier removed duties assigned to, and performed by, the Claimants’ positions of transporting train and engine crews and other duties normally associated with same, and assigned same to non-covered persons, employed by ‘City Service Cab Co.’ at Binghamton Yard, Binghamton, NY, instead of utilizing and/or calling the Claimants listed on attachment ‘A’ to perform the involved duties.

(b) The duties being claimed have been historically assigned to, and performed by, the clerical employees at this location, until on/or about July 1, 1993, when the Carrier arbitrarily and entirely removed same from their positions.

(c) Claimants should now each be allowed eight (8) hours punitive pay based on the pro-rata hourly rate of \$14.05,

commencing July 1, 1993, and continuing for each and every day thereafter, 24 hours a day, 7 days a week until the violation is corrected.

(d) The Claimants be paid on a continual rotating basis subject to their availability in accordance with Rules 4 and 5 for each date that the strangers perform the above clerical work.

(e) The successors, if any, to the Claimants' positions be considered as Claimants in this claim.

(f) This claim has been presented in accordance with Rule 28-2 and should be allowed.

Attachment 'A' to Claim I

R. Rumenapp	E. Delanoy	P. Berg
M. Eggleston	D. Perri	A. Lindsay
L. Neff	J. Terescavage	N. Jewell
D. Logan	D. Pettit	J. Sudlesky

II. The following claim is hereby presented to the Company in behalf of Claimants listed on Attachment 'A':

(a) The Carrier violated the Clerks' Rules Agreement effective September 26, 1990, particularly Rules 1 (Scope), 4, 5, Appendix I and other Rules, when commencing on/about July 1, 1993, 24 hours a day, 7 days per week the Carrier removed duties assigned to, and performed by, the Claimants' positions of transporting train and engine crews and other duties normally associated with same, and assigned same to non-covered persons, employed by 'City Service Cab Co.' and 'D&T Cab Co.' at Buffalo Yard, Buffalo, NY, instead of utilizing and/or calling the Claimants listed on Attachment 'A' to perform the involved duties.

(b) The duties being claimed have been historically assigned to, and performed by, the clerical employees at this location, until on/or about July 1, 1993, when the Carrier arbitrarily and entirely removed same from their positions.

(c) Claimants should now each be allowed eight (8) hours punitive pay based on the pro-rata hourly rate of \$14.05, commencing July 1, 1993, and continuing for each and every day thereafter, 24 hours a day, 7 days a week until this violation is corrected.

(d) The Claimants be paid on a continual rotating basis subject to their availability in accordance with Rules 4 and 5 for each date that the strangers perform the above clerical work.

(e) The successors, if any, to the Claimants' positions be considered as Claimants in this claim.

(f) This claim has been presented in accordance with Rule 28-2 and should be allowed.

Attachment 'A' to Claim II

**M. Stachura
K. Kramer
R. Jefferlone
T. Goergen
A. Contro"**

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Prior to July 1, 1993, Carrier's Clerical forces employed at its Binghamton and Buffalo, New York, facilities performed the duties of transporting train and engine crews along with their other duties. Subsequent thereto, Carrier contracted with City Service Cab Company to transport crews at Binghamton and Buffalo. Arrangements were also made with D&T Cab Company to transport crews at Buffalo.

The record also reveals that Carrier assigned non-Agreement employees and employees in other crafts to transport crews at the involved locations.

Claims were filed by the Organization on August 16, 1993 contending violation of Rule 1 (Scope), 4, 5 and Appendix I. Carrier declined the claims on September 10, 1993 on the grounds that transporting crews was done on an "AD HOC" basis and was an incidental part of the clerical duties. Thereafter, the claims were handled to a conclusion in accordance with the governing Agreement provisions. Being unable to reach satisfactory disposition, the claims were properly filed with this Board on August 17, 1995.

Study of the voluminous record submitted to the Board reveals that Carrier at no time denied that the transporting of train and engine service employees was performed by its Clerical force assigned at Binghamton and Buffalo, New York, prior to July 1, 1993. Carrier defends its removal of the work from the Clerical force on the grounds that transporting train and engine crews "is not exclusive to the Clerical Organization."

The Organization supports its claims on the grounds that "Rule 1 - Representation/Scope" reading:

"(a) The right to make and interpret contracts, rules, rates and working agreements for employees covered by this Agreement shall be vested in the

regularly constituted committee of the Transportation Communications International Union.

(b) This contract shall govern the hours of service, rates of pay and working conditions for employees of the Carrier engaged in work in positions to which this agreement applies as provided in Rule 32, i.e. Clerks Grade I, II and III. Positions and/or clerical duties shall not be removed from the application of Rules of this Agreement except by agreement between the parties signatory hereto or as provided herein.

(c) Clerical duties covered by this Rule which may be incidental to the primary duties of an employee not covered by this Agreement, may be performed by such employee provided the performance of such duties does not involve the preponderance of the duties of the other employee not covered by this Agreement.

(d) This contract is intended to maintain harmonious working relationships between the Carrier and its clerical employees by setting forth known standards and providing for equitable methods of settling differences should they arise.

(e) Employees covered by this Agreement will be given proper familiarization in the operation of the equipment required to perform their duties. When new machines are installed, procedures are changed or new work is added to existing equipment, employees will be furnished the additional familiarization required."

is a "Position and Work" type Rule, as opposed to a "General" type Rule and points out that under a Position and Work Scope Rule, it need not prove that the work involved is exclusive to the Clerical craft, and that all it need do is prove that the work involved was assigned to the Clerical positions and performed by them on a regular basis.

On the question of whether the Scope Rule before the Board is a "General" type Rule or a "Position and Work" type Rule, the issue was put to rest by the Third Division in its Award 31018, involving these same parties, the pertinent part reading:

“The Scope Rule involved is a ‘Position and Work’ type of rule that prohibits the removal of duties performed by Clerical employees except by agreement of the parties.”

We endorse the findings of the Board in Award 31018, and conclude that the Organization’s position that it need only prove that the duties of transporting crews was assigned to and performed by Clerical forces at Binghamton and Buffalo to bring the duties under its Scope Rule is correct.

The record before the Board evidences that the duties of transporting train and engine crews was a duty performed by Carrier’s Clerical forces at Binghamton and Buffalo, New York, prior to July 1, 1993. Therefore, it is self-evident that Carrier violated the Agreement when it removed the work from its clerical forces without agreement of the Organization.

Having found that the Agreement was violated, we turn to consideration of the remedy advocated by the Organization. From the record before us, we find the remedy advocated to be excessive for several reasons. First, the Organization makes the statement that the work may have been considered shared, which we take to mean that Clerical forces did not perform 100% of the work. Secondly, we do not find evidence of the Clerical forces performing sufficient crew transportation work to justify its claim for eight hours punitive pay for each day, 24 hours a day, seven days a week, until the violation is corrected.

Based on what we can find in the record before us as to the amount of work involved, and the fact that it may have been shared prior to July 1, 1993, we conclude that two hours per shift at the pro rata rate would be a reasonable measure of the losses sustained by the Clerks, until the work is either returned to the Clerical forces or the parties reach some other reasonable accommodation.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of August 1997.