

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32411
Docket No. CL-32122
98-3-94-3-527

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Houston Belt & Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11096) that:

1. The Houston Belt & Terminal Railway Company violated the Rules Agreement effective April 15, 1972, as amended, as well as the Agreement between the parties dated October 19, 1990 when it allowed and/or permitted an employee not coming under the Scope of the clerical Agreement to perform work which had historically and by agreement been assigned to the clerical employees.
2. The Houston Belt & Terminal Railway Company shall be required to afford clerical employee R. E. Bates eight (8) hours pay at the straight time rate of Job No. 7119 for date of August 14, 1993.”

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.

As a result of a Yardmaster's request on August 14, 1993, Claimant was sent to Settegast Yard to haul a crew to Pierce Yard. Upon his arrival, Claimant was advised by Trainmaster Pennington that he rather than Claimant would bus the crew. This claim followed with the Organization relying upon the positions and work Scope Rule.

The Organization has not carried its burden. The record shows the type of work involved in this dispute is shared work. See e.g., Public Law Board No. 5344, Award 4:

"... The Carrier argued that 'everyone under the sun' had hauled yard and road crews including taxis and Brown's Limo. . . .

. . . Public Law Board No. 1802, Award No. 14, between the parties supports Carrier's position indicating that it was shared work by numerous positions of the Carrier as well as outsiders. While there is a lack of proof for the Carrier's position that Brown's Limo hauled crews for over ten years, there is evidence since early 1989 and no probative evidence to deny that other positions and outsiders performed the service."

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 21st day of January 1998.