

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33598
Docket No. MS-33459
99-3-96-3-970

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

(T. R. Jensen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former C&NW
(Transportation Company)

STATEMENT OF CLAIM:

- “(1) That the Carrier violated the controlling BRAC (TCU) Agreement of April 26, 1972 as amended particularly the Scope Rule 1, when on the following dates as stated below, it required and/or permitted employees not covered by said agreement to perform computer data entry which is reserved to employees covered therein of the above agreement.
- (2) The Carrier shall now compensate the employee T. R. Jensen for eight (8) hours pay at the time and one half rate of his position for each of the three (3) shifts on these dates:

5/1/88 through 6/17/88, 6/18/88 through 7/31/88, 8/1/88 through 9/16/88, 11/7/88 through 12/31/88, 1/1/89 through 2/20/89, 3/17/89 through 4/28/89, 4/29/89 through 6/22/89, 7/17/89 through 8/13/89, 8/28/89 through 9/8/89, 9/18/89 through 11/14/89, 11/15/89 through 1/12/90, 2/1/90 through 3/31/90, 4/6/90 through 6/4/90.”

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.

The record reveals that Claimant has relieved the Organization of any further handling of this matter and Claimant has stated his "intention to proceed with the advance of these claims towards arbitration myself."

The claim asserts that Agreement-covered work was performed by non-covered individuals. The burden is on Claimant to demonstrate a violation of the Agreement. Claimant's burden has not been met.

Based on the specific facts presented, the record fails to establish that the disputed work was performed for anything other than a few minutes per shift (at most). Further, the record shows that the disputed work was work the non-covered individuals had previously performed. Finally, the record shows that the disputed work was incidental to those non-covered individuals' work.

Because these kinds of cases are fact specific, this determination is on a non-precedential basis.

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 16th day of November 1999.