

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33644
Docket No. CL-34451
99-3-98-3-96**

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

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

STATEMENT OF CLAIM:

**"Claim of the System Committee of the Organization (GL-11943)
that:**

(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 September 25, 1996, the Carrier assigned and permitted Yardmaster D. Longtin, to perform clerical duties of but not limited to those shown on Attachments "A" and "B", which are duties that were removed all or in part from positions train clerk, Symbol No. 131 and 132 located at Rouses Point Yard, Rouses Point, New York, following the abolishment of same effective September 24, 1996, during the first shift tour of duty.

(b) The duties being claimed have been historically assigned to, and exclusively performed by the Clerical Employees at this location, until September 24, 1996, when the Carrier arbitrarily and entirely removed same from the Claimant's positions.

(c) Claimants' Carswell and Merchant should each now be allowed eight (8) hours punitive pay based on the pro-rata hourly rate of \$14.88, commencing September 25, 1996 and continuing for each and every day thereafter, until this violation is corrected.

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.

On September 16, 1996, the Carrier served notice that effective September 24, 1996, four Train Clerk positions in Rouses Point Yard would be abolished. At the same time, three new Train Clerk positions were established at Rouses Point Yard. However, no clerical position was established for the first trick (7:00 A.M. – 3:00 P.M.) One of the Train Clerk positions abolished on September 16, 1996 had covered the first trick seven days a week.

The Carrier maintains that the first trick Train Clerk position was abolished because there was slack time on the other clerical positions at Rouses Point Yard because of new technology. According to the Carrier, Clerks assigned to the other tricks assumed the clerical duties formerly performed by the first trick Train Clerk whose position was abolished.

The Organization disagrees with the Carrier's contention. It claims that Yardmaster D. Longtin has been assigned the clerical duties that were formerly performed by the first shift Train Clerk at Rouses Point Yard. This was a violation of Rule 1 (b), which is a "positions and work" Scope Rule, according to the Organization. The Organization filed a timely claim on behalf of clerical employees at Rouses Point Yard. It asserts that these employees should be compensated at the punitive rate for each day that this violation continues.

There is no question that Rule 1(b) proscribes positions and/or clerical duties from being removed from the Scope of the Agreement except by mutual

agreement of the signatories thereto. However, Rule 1(c) has been determined to be a limitation on the broader language of Rule 1(b) by the Board. See Third Division Award 31648, which involved a dispute on this Carrier.

Award 31648 is markedly similar to the dispute now before the Board. We feel constrained to follow that well reasoned decision.

It is unclear from the record before the Board exactly what clerical duties formerly performed by the first trick Train Clerk at Rouses Point Yard have allegedly been assigned to Yardmaster Longtin. Therefore, based on the record before us we are unable to conclude that clerical duties were removed from the Scope of the Agreement in contravention of Rule 1(b).

The Carrier contends that the clerical duties performed by the first trick Train Clerk have been distributed among the three clerical positions at Rouses Point Yard. Thus, if some of these duties were, in fact, assigned to Yardmaster Longtin as the Organization contends, it would appear that they were incidental to Yardmaster Longtin's primary duties and they did not involve the preponderance of his duties. Accordingly, such an assignment was permissible under Rule 1(c). The claim must be denied as a result.

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.