

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 33651  
Docket No. CL-33645  
99-3-97-3-13**

**The Third Division consisted of the regular members and in addition Referee Robert G. Richter when award was rendered.**

**(Transportation Communications International Union  
PARTIES TO DISPUTE: (  
(Southern Pacific Transportation Company**

**STATEMENT OF CLAIM:**

- "1. Carrier violated the Agreement at the San Francisco General office beginning on September 26, 1995, when it permitted or required fourteen (14) non-covered employees to perform clerical work at the Document Room at the San Francisco General Office located at 475 Brannon Street.**
- 2. Carrier shall now be required to compensate employees listed below, their substitutes and/or successors, for eight (8) hours at the applicable overtime rate of Position 016, \$120.16, Collection Clerk, beginning September 26, 1995, and continuing for each and every day thereafter until the work is returned to the TCU/SPTCO union clerks working at 475 Brannon Street.**

- |                           |                             |
|---------------------------|-----------------------------|
| <b>1. Jack Williamson</b> | <b>8. Doris Weaver</b>      |
| <b>2. Helen Jeung</b>     | <b>9. Marilyn Robrecht</b>  |
| <b>3. Ray Tate</b>        | <b>10. Yvonne Baxter</b>    |
| <b>4. Ingrid Balodis</b>  | <b>11. Carolyn Meredith</b> |
| <b>5. Johnny Parnala</b>  | <b>12. Josie Scott</b>      |
| <b>6. Beulah Jones</b>    | <b>13. Gloria Mitchell</b>  |
| <b>7. Park Jones</b>      | <b>14. Jose Carracedo"</b>  |

**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 facts in this case indicate that on September 26, 1995 the Carrier used 14 temporary workers to pull documents from the Carrier's document room. The record is void of any evidence that the work was performed on any other day than September 26.

The Carrier was involved in civil litigation and was ordered by the court to produce certain documents. The Carrier's Law Department hired the temporary workers to pull the documents.

The Organization filed this claim for those employees of the document room, who were fully employed and suffered no wage loss. The Organization claims the Carrier violated "Rule 1 - Scope Rule" when it used other than clerical employees covered by the Agreement to perform clerical duties.

The Carrier argues that the Scope Rule was not violated and that even if the Rule was violated, the Claimants suffered no loss of earnings. It also argues the time limit mandated by the Court necessitated the use of the temporary workers.

The Organization has the burden to prove the Agreement was violated. It never denied the Carrier's assertion that it was under a time limit to produce the documents. The Organization failed to show that it had produced similar documents in any other similar circumstance.

Based on the facts and circumstances of this incident, we find that the Agreement was not violated. This decision is not to be construed as giving the Carrier carte blanche to hire temporary workers. In fact, future incidents might be viewed differently if such actions continue.

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**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.**