

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33990
Docket No. CL-35034
00-3-98-3-656

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

(Transportation Communications International Union
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12154) that:

I. Claim (AM-967) on behalf of Clerks F. Episcopo and J. Herlihy that:

- (a) The Carrier violated the Northeast Corridor Clerical Agreement, particularly Rule 1, “The Scope Rule,” when, on or about December 26, 1996, January 2, 1997, and February 18, 1997, Wilmington management (Robert Haupt and T.F. Scarpellino) input the Wilmington Shop workforce’s time cards for the holidays of December 24, 1996, December 25, 1996, January 1, 1997, and February 17, [sic] 1997. Claimants are incumbents of this work and perform this work five (5) days per week.**
- (b) Claimants, being available and qualified, should now be allowed eight (8) hours each time and one-half for December 26, 1996, January 2, 1997, and February 18, 1997, to satisfy this claim.**
- (c) Claim filed in accordance with Rule 25 and should be allowed as presented.**

II. Claim (AM-968) in behalf of Clerk Mona Minnick that:

- (a) The Carrier violated the Amtrak Clerks’ Rules Agreement particularly Rule 1, the Scope Rule, when during the month of January 1997 it permitted C&S Supervisor C. A. Dant to perform Timekeeper’s duties which have historically and traditionally been**

performed by Clerks at the Ivy City Payroll Office. These duties are that of processing the time cards for the C&S department in Washington, D.C. Supervisor Dant worked at these duties 5 hours during this time frame.

- (b) Claimant M. Minnick now be allowed 5 hours at \$15.63 per hour at time and one half on account of this violation.
- (c) The Claimant is qualified Timekeeper and should have been assigned the work according to the Agreement.
- (d) This claim has been presented in accordance with Rule 25 and should be allowed.

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.

Claim No. 1 in the case at hand alleges that the Carrier violated Rule 1 (Scope) of the Amtrak/TCU Agreement when it allegedly allowed management employees Robert Haupt and T. Scarpellino to input the Wilmington Shop workforce's time cards for the holidays of December 24, 1996, December 25, 1996, January 1, 1997, and February 17, 1997. The Organization asserts that the work performed by Wilmington management employees for the holiday time cards, was work normally done by Claimants Episcopo and Herlihy, who were assigned as Timekeepers at Amtrak's Wilmington, Delaware, Maintenance Facility.

Claim No. 2 of this same case alleges that the Carrier violated the Amtrak Clerks' Rules Agreement, particularly Rule 1 (Scope), when it allowed C&S Supervisor C.A. Dant to perform five hours of payroll Timekeeper work at Amtrak's Ivy City, Washington, D.C. payroll office during January 1997. The Organization seeks compensation for Payroll Clerk Mona Minnick and Clerks F. Episcopo and J. Herlihy.

At issue in the case at hand is the alleged violation of Rule 1-Scope. The Organization cites Rule 1(e) as the controlling Rule restricting non-agreement people from doing Clerical work and reserving that work for the Clerical Craft. Rule 1 - Scope in pertinent part:

"RULE 1 - SCOPE

- (e) It is not the intent of the Corporation to perform work which is within the scope of this Agreement. However, it is recognized that supervisors will occasionally perform such work, when necessary, under critical and/or emergency conditions, while instructing employee, and/or when incidental to their assigned duties. Supervisors shall not be used to displace or replace employees regularly assigned to perform the task, nor will supervisors be used to negate the provisions of the overtime rules of this Agreement."

The Organization asserts that the Carrier has not shown critical and/or emergency conditions existed on the date in question or that employees were being instructed in the work by non-agreement people doing the work in dispute. The Organization further asserts that the Carrier has not contended the work done by the non-agreement people was incidental to their regular duties. Also cited by the Organization in the claim at hand as supportive of its position is Rule 1 (d):

"RULE 1 - SCOPE

- (d) When a reduction in force occurs which affects employees covered by this Agreement, the remaining work shall be performed by employees covered by this Agreement."

The Organization points to response of Financial Manager Payroll Operations Frazier on May 15, 1997 to the claim of March 18, 1997, which he denied and responded in pertinent part:

"In previous claims on this subject, I indicated to you that it was necessary to reduce payroll costs associated with labor collection.

Since the Automated Labor Collection System (ALCS) provides direct entry of timekeeping data into the Labor Collection System (LCS) by the employee's supervisor, there is no need for a payroll clerk to perform the function again. . . ."

The Organization concedes that the Scope Rule does recognize that the Supervisors will occasionally do clerical work under critical and/or emergency conditions, but emphasizes that a budget reduction does not meet that definition. The Claimants were available, they were qualified incumbents of this work and performed this work five days a week.

The Carrier objects to these two claims being lumped into one claim and asserts that the case is procedurally defective because they were handled separately on the property, they involve different Agreements, locations, facts and circumstances. The Carrier requests that the Board dismiss this claim.

Regardless of the request for dismissal, the Carrier asserts that the Parties' Scope Rule is general in nature and does not grant exclusivity to members of the TCU Craft in either case. The work in question (input of timecard information into Amtrak's payroll system) is not performed exclusively by TCU employees either on a system-wide basis, or at Amtrak's Ivy City, Washington, D.C. payroll office and the Amtrak's Wilmington, Delaware Maintenance Facility by custom, tradition or practice. In addition, the Carrier states that the input and update of payroll status, payroll records and reports for Amtrak's payroll department does not belong exclusively to the TCU Organization. Further, the Carrier points out that employees of other crafts and management employees have traditionally and historically handled payroll matters and that such work is performed daily by non-TCU employees across Amtrak's nationwide system.

After careful review of the record the Board finds that it is unclear whether the work in question may be reserved to the TCU. However, the Organization has failed to

provide proof that the work in question was done by a Carrier Officer. Third Division Award 19833 is on point with both cases of the claim at hand. The Board concurs with the findings of Referee Sickles who stated:

“This Board is fully aware of the very serious consequences of a Scope Clause. Surely a Carrier must refrain from removing work from a class when it has agreed to refrain from said action by contractual language, but just as surely, a Carrier must not be found guilty of such a severe violation without more than a conclusionary allegation, supported by a few isolated assertions which fail to specify with any degree of certainty the specific nature, times and amounts of removal. The burden of proof rests with the Organization. That burden exists for the protection of both parties as well as the Board and it is incumbent upon the Claimant to produce sufficient evidence to support the version of the facts upon which it relies. See AWARD 10067 (Weston). Here, we have just a fleeting glimpse of the asserted facts.”

The Organization has failed in this instance to offer sufficient evidence to prove a violation of the Scope Rule. Accordingly, this claim, including both of its cases, is denied without resolving the question of whether the disputed work belongs to the TCU craft.

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 28th day of March, 2000.