

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 34036
Docket No. CL-34645
00-3-98-3-297

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(Burlington Northern Santa Fe Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12021) that:

1. Carrier violated the Clerks' Agreement effective December 1, 1980, when beginning July 9, 1994, it abolished the Agent position at Brainerd, Minnesota, and allowed or instructed strangers to the Working Agreement to perform work previously performed by the incumbent of that position.
2. Carrier shall now be required to compensate the Senior Available Extra List Employee at Brainerd, MN, \$119.97 per day and if none available claim is on behalf of a Guaranteed Rotating Extra Board (GREB) Employee at Brainerd/Staples, Minnesota, and if all GREB employees are unavailable, claim is on behalf of the Senior Qualified Employee at Brainerd, Minnesota, at the applicable overtime rate of \$119.97 per day, beginning July 9, 1994, and continuing each and every day thereafter.”

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 Carrier abolished the Agent position at Brainerd, Minnesota, effective end of shift on July 8, 1994 and transferred the Agent duties to Superior, Wisconsin. The initial claim asserted that "several duties remained at Brainerd, Minnesota Agency which the Carrier could not physically transfer and are still performed today by employees other than TCU members." The claim then specified the following duties allegedly performed by strangers:

Yard checks and industry car checks

Janitorial duties

Posting of bulletins, train line-ups for section crews, other notices

Handling of all inbound and outbound mail

Maintaining facsimile machine, computer printer and other office equipment

Remove switch lists and other documents from printer

Handle Trainmen/Enginemen timeslips

Print yard and track listings for trainmen

Answer telephones regarding various inquiries

Ordering material

Fax all documents necessary to various locations

File all necessary documents and forward to Superior, WI when necessary

Relying upon Rule 1A ("Work now covered by the Scope of this Agreement shall not be removed except by agreement between the parties"), the Organization sought compensation.

The parties then detailed their respective positions concerning the work allegedly remaining and allegedly given to strangers to the Agreement. The Organization provided a 1990 listing of the Brainerd Agent's duties (40 items). The Carrier responded in detail asserting that the listing was outdated; various functions of the listing were eliminated due to technological changes or are no longer performed at Brainerd (items concerning various weather, train movement duty record reports, train line-ups, entering waybills for special empty cars into the computer, making out certain bills of lading for logs, giving Dispatcher OS of trains, keeping current copies of slow orders, making out monthly reports of Switchmen and Trainmen short crew report, and quarterly reports of number of loads received from various locations, there is no scale at Brainerd for weighing cars, there is no switchman roster at Brainerd, paychecks were changed to home delivery effective July 1, 1994 so they no longer are handed out, yard checks were discontinued July 1, 1994 thereby eliminating certain yard check duties and the balance of the duties were transferred to Superior). As the matter progressed on the property, the parties continued to counter each other's assertions concerning what work remained, how much remained and who did it. The bottom line for the Organization was that work was allegedly transferred to strangers to the Agreement. The bottom line for the Carrier was that the work was transferred to Superior Clerical forces, eliminated and always performed by other crafts or was incidental to others' work.

The burden is on the Organization to demonstrate that the Carrier unilaterally removed sufficient Scope covered work and assigned it to strangers to the Agreement. On a prima facie basis, the Organization did that. The Organization gave great detail concerning the work it claimed remained at Brainerd that was transferred to non-covered employees. However, given the detailed rebuttals by the Carrier, the Board cannot clearly determine that such work was not transferred to Superior Clerical forces, eliminated and previously performed by other crafts or was incidental to the other employees' work. Ultimately, the Carrier cast sufficient doubt upon the Organization's prima facie demonstration. The ultimate burden remains with the Organization. That burden has not been carried.

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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 25th day of May, 2000.