

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35447
Docket No. CL-35638
01-3-99-3-559**

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-12420) that:

Please consider this as a claim of the District 1089 Protective Committee on behalf of Ms. P. Gillery, Seniority Date February 14, 1983. The Carrier has violated the current agreement between the National Railroad Passenger Corporation and the Transportation Communications International Union, particularly, but not limited to Appendix E, Extra Board Agreement, Articles 5, 6, 7, and Rule 1 - Scope.

Beginning in August of 1997 the Carrier began a program of placarding company vehicles and track equipment. In doing so the Carrier assigned this work to Mr. F. Tobicas, Road Mechanic, located at Providence, RI MOW Base. As Mr. Tobicas accomplished this task he would not only make a notation of same either on a particular form used for this purpose or in a notebook of some kind, but he would also input the information he recorded into a computer. The entering of this information into a computer was not incidental to Mr. Tobicas' position as Road Mechanic, but rather Mr. Tobicas would spend as much as four hours daily inputting this data.

In as much as Ms. Gillery is qualified clerk typist working at this location and was available to perform this work, Ms. Gillery should have been offered this work but was not. As per Mr. G. Stafford Project Engineer, this is incidental work and not part of any one clerk typists duties.

Therefore the Carrier shall compensate Ms. Gillery four (4) hours at her punitive rate of pay for each and every day retroactive to sixty (60) days from the receipt of this claim and continuing for as long as Mr. Tobicas is allowed to perform these duties. That in order to terminate this claim the Carrier must return this work to the clerk typists at this location.”

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.

In the beginning of August 1997, the Carrier began a program of placarding company vehicles and track equipment. The Carrier assigned this work to F. Tobicas, Road Mechanic, located at Providence, RI MOW Base. F. Tobicas would make notations in his notebook and then input the data into a computer.

On October 20, 1997, the Organization filed its original claim stating that P. Gillery was a qualified Clerk Typist working at the Providence, Rhode Island MOW Base and was willing to perform the task given to F. Tobicas, but was denied the work. The Organization asserts that F. Tobicas would spend as much as four hours daily inputting the data into the computer. It contends that the use of a computer is not incidental to F. Tobicas' position as Road Mechanic. This violated the current Agreement (Appendix E and the Scope Rule) according to the Organization, because the clerical work was assigned to an employee who was not covered by the clerical Agreement. The Organization submitted a claim on behalf of P. Gillery seeking compensation consisting of four hours at her punitive rate of pay for each and every day retroactive to 60 days from the receipt of this claim and continuing for as long as F. Tobicas was allowed to perform the duties.

The Carrier contends that a violation has not occurred, specifically because the Scope Rule of the current Agreement is general in nature and does not contain specific language granting exclusivity of computer work to members of the TCU craft. It maintains that, as established through preceding Arbitration Awards, a general Scope Rule requires the Organization to bear the burden of proof and to present evidence that the disputed work was reserved exclusively to its members through past practice, tradition, or custom on a system-wide basis. The Carrier notes that this becomes a question of fact to be resolved by examining the record “to determine whether it demonstrates that the employees have customarily, historically, and traditionally performed the kind of work in dispute.” See Third Division Award 29598.

The Carrier asserts that the Organization has failed to meet their burden of proof by not demonstrating how the Agreement was violated and by not presenting any evidence that a violation occurred. First, it contends, no evidence has been put on the record to identify what information Road Mechanic Tobicas entered into the computer or the times and/or time of day it was entered. Second, according to the Carrier, the Organization did not present any information that computer entry work belonged historically, traditionally, and exclusively to a system-wide TCU craft. In fact, the Carrier urges that the Organization didn’t provide any evidence to dispel the argument of the Carrier that employees of other crafts and classes perform the work of entering data into computers at all Amtrak facilities across the country.

The Board finds that the Organization did not meet the burden of persuasion in this case. The Scope Rule in the current Agreement is general in nature because it does not specifically state that computer data entry belongs to the Clerk’s craft. Therefore, the Organization needed to present evidence that showed the TCU craft historically performed the work in dispute. The Carrier effectively stated that it is a system-wide policy for many different positions within the Amtrak Corporation to input computer data as part of their regular duties. This claim was undisputed by the Organization. Also, the actual circumstance surrounding the data entry performed by Road Mechanic Tobicas is rather vague. For example, no evidence was submitted supporting times or dates regarding when the disputed work was performed. In light of the foregoing, the Board finds no basis on which to sustain the claim.

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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 26th day of April, 2001.