

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35456
Docket No. CL-35100
01-3-98-3-831**

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 Union (GL-12209) that:

1. Carrier violated the Scope of the Clerks' Agreement dated May 6, 1980, when Carrier directed or allowed strangers to the Clerks' Agreement to perform clerical work involving TSS computer reporting.
2. Carrier shall now be required to compensate any available Extra List employees or if none available, the first out available GREB employee or, at the applicable pro rata rate, three shifts per day, seven days per week; if none available, the proper respondent pursuant to the overtime rules at Sioux City, Iowa; for eight (8) hours per shift, seven days per week, at the rate of \$128.54 beginning August 19, 1996, and continuing until the work is returned to the clerical craft.”

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.

As Third Party in Interest, the United Transportation Union - Yardmasters Department was advised of the pendency of this dispute, but chose to file a Submission with the Board.

After the merger of the Burlington Northern and the Santa Fe Railroads, the Carrier implemented the Transportation Support System ("TSS"), a computerized reporting system which had been in use on the former Santa Fe prior to the merger. TSS replaced the COMPASS and YMS systems. The Organization contends in this dispute that the effect of the Carrier's implementation of TSS at Sioux City, Iowa, in August 1996 violated the Scope Rule in that work performed by Clerical employees was assigned to Reporting Yardmasters without the Organization's agreement. The Carrier and the Yardmasters disagree.

In pertinent part, Rule 1 provides:

"Rule 1. SCOPE

- (A) Work now covered by the scope of this Agreement shall not be removed except by agreement between the parties.**
- (B) When and where machines are used for the purpose of performing work coming within the scope of this Agreement, not previously handled by machines, such work will be assigned to employees covered by this Agreement. A change in the equipment used for the performance of such work will not remove such work from the coverage of this Agreement."**

A comparison of the duties performed before and after implementation of TSS at Sioux City shows the following:

Prior to implementation of TSS, Yardmasters at Sioux City decided which cars would be assigned to outbound trains; Yardmasters instructed the Switch Crews how

to line up the cars in a track and, after completion of the line up, changed the inventory in YMS to reflect the train makeup; Yardmasters notified the Clerical employees of the train makeup, which included the train symbol and track location ("finaling" the train); a wheel report for the train was printed (which could be performed by a Clerical employee); the Clerical employee then transferred the train consist from YMS to COMPASS; after departure, Yardmasters removed the cars from YMS inventory and the AEI reader automatically reported the train's departure.

After implementation of TSS, Yardmasters at Sioux City continue to instruct Switch Crews concerning the construction of trains, but locomotives and cars are automatically assigned a train symbol; after the Switch Crew completes its function, the Yardmaster changes the inventory to reflect the train makeup; instead of telling the Clerical employee that the train is "finalled," the Yardmaster informs TSS directly and TSS automatically "finals" the train; 30 minutes prior to the Train Crew coming on duty, TSS generates a wheel report; after the train departs, the AEI scanner automatically departs the train in TSS, corrects discrepancies in the standing order of the train and removes the cars from the yard inventory.

In its claim and in the development of the evidence on the property, the Organization focuses on the following specific work performed by Clerical employees which it contends was removed from the covered employees: making up trains; updating computer systems for the purpose of running wheel reports; identifying and correcting errors in the computer system; running numerous reports; putting out lineups with estimated arrival times, car counts and power; verifying head-end and rear-end inventories; and handling and coordinating the distribution of grain empties.

The Organization has the burden to demonstrate a violation of the Agreement. In this case, the Organization did not meet that burden.

TSS is a highly sophisticated computerized reporting system. The Organization has not shown that the implementation of TSS caused the transfer of Clerk's work to Yardmasters. Instead, the evidence shows that TSS enabled the Yardmasters to perform their work more efficiently. At best, as argued by the Carrier and the Yardmasters, TSS eliminated Clerk's work, but only to the extent that the Clerk's work was performed as a middleman function to work primarily performed by the Yardmasters. In such situations, a Scope Rule violation cannot be shown. See K Board, Award 197 at page 10 ("The introduction of the laptop computer eliminated the

middleman function because the Supervisor communicates directly with the computer instead of through an intermediary"); Public Law Board No. 5555, Award 21 at page 5 ("The entering of handwritten data into the computer was performed by Clerks, that function is no longer required"); K Board, Award 129 at page 17 ("... the Organization has not explained why a Yardmaster should be precluded from marking on the screen precisely the same information he has already placed on a printed list"); Public Law Board No. 2470, Award 59 ("Eliminating a clerical step is not a Scope Clause violation"); Public Law Board No. 3735, Award 1 at page 26 ("... the Carmen's utilization of the CRT device to the extent it causes the transmission and input of car repair onto the computer magnetic tape is incidental to their primary duties and integral to the essence of Carmen's work.")

To the extent that the Organization relies upon the transfer of Clerical positions from Sioux City and the establishment of Yardmasters positions to support its claim, the record reveals that Yardmaster positions were established at Sioux City in August 1996, but the customer service and field support functions performed by the Clerical employees were not transferred to Topeka, Kansas, and Fort Worth, Texas, until May 25, 1997, some nine months after the Yardmaster positions were established. Given that nine month lapse and the above discussion concerning TSS, no nexus has been shown between the transferring of customer service and field support functions and the establishment of the Yardmaster positions to warrant a conclusion that covered Clerical work has been transferred to strangers to the Agreement in violation of the Scope Rule. The Organization's assertion that more Yardmasters are working at Sioux City after the implementation of TSS than before certainly raises questions. However, in and of itself, the asserted increased number of Yardmasters cannot be used to bootstrap a Scope Rule violation where, as here, the other evidence does not support such a violation in that the Organization has not demonstrated a transfer of Clerks' work to the Yardmasters as opposed to a more efficient performance by the Yardmasters of their own work and the elimination of the middleman function.

Based on the above, we shall deny the claim.

AWARD

Claim denied.

Form 1
Page 5

Award No. 35456
Docket No. CL-35100
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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 22nd day of May, 2001.