

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35818
Docket No. CL-34929
01-3-98-3-660**

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12157) that:

1. Carrier violated and continues to violate the Scope Rule of the Working Agreement dated May 6, 1980, but not specifically confined to this rule or agreement, when effective with the end of the tour of duty on December 31, 1996, it abolished the position held by the only clerical employee at the Mechanical Shop at Superior, Wisconsin and assigned the work previously performed by the clerical employee to strangers to the Working Agreement.
2. Carrier shall now compensate Claimants in the following order dependent upon availability, Extra List, GREB or senior employee under Rule 37, eight hours pay per day at the rate of Position 006, Steno Mech. Clerk each day beginning January 1, 1997, and continuing until such time as the violations cease.”

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.

By notice dated June 3, 1996, the Carrier advised the Organization of its intent to transfer work from various locations to Kansas City, Kansas, including the work performed by Steno/Mechanical Position No. 006 at Superior, Wisconsin. By letter dated December 18, 1996, the Carrier advised the incumbent on Position No. 006 that her position would be abolished effective December 31, 1996.

The Organization asserts that effective January 1, 1997, strangers to the Agreement began performing the duties formerly performed by Position No. 006 at Superior. The Organization further asserts that 15 areas of work previously performed by Position No. 006 continued to be performed at Superior, but by strangers to the Agreement. The basis for the Organization's position is a list prepared by a General Foreman dated November 6, 1996 identifying 15 areas of work which "are the basic day to day activities/functions of our current clerical assignment." Citing the specific areas of work raised by the Organization, the Carrier argues that it transferred the work from Superior to Kansas City effective December 31, 1996; other functions performed by Position No. 006 at Superior were automated; any work that remained which was previously performed by Position No. 006 was also previously performed by other employees and, to the extent the work is still performed, such work is also incidental to the other employees' duties or de minimis.

The areas of work from Position No. 006 raised by the Organization shall be examined under the traditional Rules governing this kind of Positions and Work Scope Rule and keeping in mind that the Organization bears the burden of demonstrating sufficient facts to show a violation of the Scope Rule. Examination of those areas of work raised by the Organization shows the following:

1. Daily timeroll entry for 67 employees.

Foremen now verify time entries through use of a computer and the Carrier's METTS System, whereas before they verified cards completed by the employees which were then given to clerical employees for entry into the Carrier's payroll system. Such a change does not constitute a Scope Rule violation. See Third Division Award 34145:

“ . . . [P]rior to introduction of METTS, Mechanical employees prepared by hand Mechanical Form Nos. 15170, 15171, 15172 and 17173, which were then verified and approved by Foremen and then were processed by Clerical employees.

The Carrier repeatedly states that the preparation of these forms has been eliminated. The Board finds no contradiction to this assertion. Through the METTS system, the Foreman is now presented with a computer display of this same information, which has apparently been entered by Clerical employees at another location. From this display, according to the Carrier, the Foreman performs the same verification and approval functions. Further clerical functions on the now defunct manually prepared Mechanical Forms no longer exists.

*** * ***

. . . METTS permits Foremen to review such data on a computer screen rather than by examination of manually created forms. . . .”

See also, Third Division Award 34025 (“The information is given to the laptop computer instead of to the Clerical employee and the laptop computer and the remainder of the linked computer system performs the work from there.”).

2. Purchase invoices received and prepared for forwarding to Topeka, Kansas.

Mechanical Supervisors have performed this function in the past and, to the extent that those Supervisors are now performing work previously performed by covered employees, such work is incidental to their duties permitted by Rule 1D (“[a]n officer or employe not subject to this Agreement may perform any covered work which is incidental to his regular duties”) and also de minimis, taking only a few seconds to perform.

3. In coming/outgoing U.S. mail and Company mail distributed/prepared for forwarding.

With respect to incoming mail, each day mail is delivered to the office located at 28th Street in Superior by the Post Office and placed in bins. Employees now pick up

their own mail from their respective bins. With respect to outbound mail, employees now take their own mail and place it in a bin where the mail is then picked up by the Post Office.

4. Copies/distributes correspondence/communications to all areas/departments and bulletin boards as necessary.

The Carrier's assertion that strangers to the Agreement previously performed this work has not been refuted. Moreover, this work also appears to be incidental to the performance of work by other employees. See also, Public Law Board No. 5405, Award 1 involving a similar incidental work provision and holding that "[s]uch allowable work includes preparing reports while under pay; using communication devices; and copying and handing train orders, clearances and/or other messages."

5. Records/distributes safety committee and general safety meeting minutes.

This work involved typing minutes from safety meetings held twice a month for all crafts. The assertions by the Carrier that this function amounted to ten minutes of work, twice a month and that other employees performed this work are not refuted. At most, this work is de minimis.

6. Prepares/distributes bulletins, job awards, recall/furlough notices for all shop crafts.

The General Foreman decides qualifications for all positions in the Superior Mechanical Department. Once that determination is made, the General Foreman forwards the information to the Manpower Clerks at Topeka who prepare the bulletins and send them back to the General Foreman at Superior. After receiving bids, the General Foreman determines the proper candidate and then notifies the Manpower Clerks at Topeka who then issue the award. The Organization has not shown that strangers to the Agreement are now performing work previously performed by covered employees.

To the extent the Organization argues that the Carrier did not address distribution of bulletins, job awards, and recall/furlough notices, the Organization has not demonstrated the extent of such duties, if any, it claims were previously performed by covered employees which are now performed by strangers to the Agreement to defeat

the Carrier's general assertions that much of the work raised by the Organization is incidental or de minimis to other's job duties as discussed in other areas of this Award.

7. Prepares investigation notices/transcripts.

This work is being performed by Clerical employees at Kansas City. No transfer of work to strangers to the Agreement has been shown.

8. Maintains/orders/distributes stationary supplies, forms, etc.

The Mechanical Department uses the Millennium Computer System which was not previously used on the former BN. Under this System, an order is automatically placed with a vendor and subsequently shipped directly to the user department. According to the Carrier, Mechanical employees now utilize the direct order/direct ship (DODS) process via electronic requisitions, which has eliminated any need to compete handwritten material requisitions. As a result, Mechanical employees utilize the computer instead of pen and paper, thereby eliminating the clerical middleman function. Use of this kind of computer system has been found not to violate the Scope Rule. Public Law Board No. 6016, Award 1 held:

"The Carrier is correct when it notes that well established arbitral precedent confirms its right to eliminate functions in the interest of a more efficient and cost effective operation. Thus, where, as here, a computerized system has eliminated a tremendous amount of paper handling and information transfer, jobs may legitimately be eliminated, without giving rise to a violation of the Collective Bargaining Agreement, even when the Scope Rule is a Positions and Work Scope Rule. . . . A thorough review of the documents supports the Carrier's position that installation of the Millennium System at Lincoln and Superior has eliminated a majority of the work formerly performed by Clerks at those sites. . . ."

To the extent as stated in PLB 6016, Award 1 that the analysis of these kinds of disputes finds that " . . . arbitral precedent is also clear that work not eliminated by technological improvements, continues to be reserved to the employees covered by the Positions and Work Scope Rule," this record does not sufficiently demonstrate that such work remained for Position No. 006 at Superior that would cause the Board to require

that such work continues at Superior for “maintains/orders/distributes stationary supplies, forms, etc.”

9. Prepared investigation notices/transcripts.

This is a duplicate of Number 7 discussed above.

10. Provides appropriate completed forms and schedules D.O.T. rehire examinations.

The Organization has not refuted the Carrier’s assertion that Mechanical employees have previously scheduled their own D.O.T. examinations and that during the year when the claim was filed, no one scheduled any rehire examinations. Again, at best, this is incidental or de minimis work.

11. Prepares locomotive lube/compressor oil and water samples for shipment as well as any and all U.P.S. shipping.

Mechanical Foreman R. Ahlberg states that “I have labeled, boxed and prepared for shipment oil, water and air compressor samples since 1986.” The Organization has therefore not shown the specific transfer of such duties to strangers to the Agreement.

12. Makes all travel arrangements for employees attending technical training.

The Carrier asserts that each Mechanical employees makes his own travel arrangements for technical training. The Organization has therefore not shown the specific transfer of such duties to strangers to the Agreement.

13. Maintains vacation/personal leave schedules for all crafts.

The Carrier asserts that in the past Local Chairmen have polled their respective memberships in order to determine the order in which vacations would be taken and that such work takes only a few minutes once a year. At best, this again is incidental or de minimis work.

14. Maintains employees records and all necessary filing.

There are no specifics presented by the Organization for this area of work.

15. Derailment files.

According to the Carrier, Mechanical Supervisors prepared a folder for each derailment and placed appropriate documentation into each file. Either the Mechanical Supervisor or the Steno/Mechanical then placed the file into a cabinet. According to the Carrier, such work takes only few seconds. This has not been refuted. At best, this again is incidental or de minimis work.

In sum, then, while raising allegations of Scope Rule violations, the Organization has not provided sufficient facts to substantiate its assertions or to refute the Carrier's demonstrations that the work formerly performed by Position No. 006 at Superior was not transferred to strangers to the Agreement in violation of the Scope Rule. Nor has the Organization demonstrated sufficient facts to refute the Carrier's assertions that if the work remained at Superior, performance of those specified duties are incidental to the work of other employees or de minimis in nature. On the merits, this claim must fail for lack of proof.

The Organization also raised a procedural argument asserting that the wrong individual denied the claim. That argument does not change the result. The Carrier clearly denied the claim. The Organization has not sufficiently demonstrated why Rule 59 ("Should any such claim or grievance be disallowed, the carrier shall . . . notify whoever filed the claim or grievance . . . in writing of the reasons for such disallowance. . . .") does not apply.

Finally, with respect to the Organization's argument that a joint check of the Carrier's records should have been performed, there is insufficient basis demonstrated in this record why such a check should be ordered.

AWARD

Claim denied.

Form 1
Page 8

Award No. 35818
Docket No. CL-34929
01-3-98-3-660

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 14th day of November, 2001.