

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36390
Docket No. CL-36298
03-3-00-3-592**

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen when award was rendered.

PARTIES TO DISPUTE: (
(Transportation Communications International Union
(Consolidated Rail Corporation (Conrail))

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12641) that:

Claim is being filed on behalf of Claimant R. E. Canfield employee #079149 that:

- (a) The Carrier violated the Clerks’ Rules Agreement effective July 1, 1979, particularly Rules 1, 5, 24, 40 and other rules when it abolished numerous agreement Customer Account Auditor, Customer Area Account Auditor and Customer System Account Auditor Collector positions and permitted and allowed agreement collection and clerical duties that were performed by the incumbents of these positions and their predecessors to be assigned to Robert Palmer who was hired as a consultant through OSI Collections Systems at the request of the Conrail Core Collections Department.**

Robert Palmer’s assignment is to work the position of Collector to specifically perform the above mentioned agreement on a regularly scheduled daily basis in a Conrail office with Conrail equipment and supplies under the direction of Conrail Collection Department supervision for a period of at least one (1) year.

- (b) Claimant R. E. Canfield should now be allowed eight (8) hours pay at the pro-rata rate of his former agreement Customer Account Auditor position or his EMR whichever is higher commencing 8/2/99 and continuing for each and every day thereon after (Including time employee is off work on furlough status) until this violation is corrected.**

- (c) Claimant should also be reimbursed for all benefits lost as a result of the time he is off work on account of this violation.
- (d) Had the Carrier properly bulletined and posted a position with the agreement clerical duties now being performed by Robert Palmer on the newly requested and created OSI Consultant/Collection position the Claimant, R. E. Canfield who was and still is qualified, available and subject to recall would have been able to return to active duty from furlough to work this position.
- (e) This claim has been presented in accordance with Rule 45 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.

Prior to 1999, the Claimant held a PAD position as a Customer Account Auditor in Conrail's Collection Department in Philadelphia, Pennsylvania. Pursuant to Article H Section 1 of the November 2, 1998 Implementing Agreement, the Carrier issued a Notice to the employees of Seniority District 26 concerning the transfer of work from Conrail to either NS or CSX locations. A "rundown" was scheduled for December 9 - 11, 1998 for the employees of Seniority District 26 to "make a selection" of available positions upon the split of Conrail on June 1, 1999. The Claimant declined to select any position but he continued working until July 14, 1999, when he was furloughed, pursuant to Section 3(a) of the November 2, 1998 Implementing Agreement.

Leaving aside, as we must, a number of additional arguments raised de novo at the Board level, the claim letter of August 31, 1999 and the denial letter of September 21, 1999

present the only issues properly presented for determination by the Board. Under date of August 31, 1999, the Organization filed the present claim on behalf of R. Canfield, asserting that following the Conrail split the work the Claimant formerly performed was assigned to a non-Agreement "consultant" in violation of the "positions and work" Scope Rule and the Claimant's seniority rights. In denying the claim by a letter dated September 21, 1999, the Carrier cited the following two reasons: "1) You have failed to define the duties. 2) You have failed to prove TCU exclusivity to the undefined duties."

The Carrier's invocation of the so-called "exclusivity doctrine" is not well placed in this case. It is well-settled that this evidentiary requirement, often applied in analyzing custom, practice and tradition of work performance under a "general" Scope Rule, has no application in claims arising under a "positions and work" Scope Rule such as the Rule involved in the present case. But the Organization still has the burden of demonstrating, by a preponderance of record evidence, that an identifiable quantum of work performed by employees under coverage of the Agreement was removed from them and reassigned or transferred to strangers to the Agreement. On that point, the Carrier's September 21, 1999 denial stands on firm ground. Absent bare unsupported assertions, there is nothing in the record to support the claim.

AWARD

Claim dismissed.

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 18th day of February 2003.