

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36393
Docket No. CL-36326
03-3-00-3-693**

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

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12674) that”

Claim of the System Committee of the Brotherhood on behalf of Claimant D. Romano-Foust, employee #905507, that:

- (a) The Carrier violated the Clerks’ Rules Agreement effective July 1, 1979, particularly Rules 1, 24, 40 and other rules when it abolished D. Romano-Foust’s former agreement position #09-009-2194-0059-7, Secretary for the Assistant Vice-President Finance and assigned agreement duties from this position and from other abolished agreement positions to non-Agreement employee Marge Ellis and other non-agreement employees.**
- (b) Claimant D. Romano-Foust should now be allowed eight (8) hours pay at the rate of \$139.55 or her EMR, whichever is higher, commencing 06/01/99 and continuing each and every day thereafter (including time claimant is off work on furlough status) until this violation is corrected and this work is returned to Agreement employees.**
- (c) In order to terminate this claim, said clerical agreement work must be returned to employees covered by the Clerks Agreement.**
- (d) 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 May 31, 1999, D. Romano-Foust ("Claimant") was the incumbent of Position No. 09-009-2194-0059-7, in the office of the Conrail Finance Department. The job description for that position read as follows:

"Perform general clerical duties including stenography, operation of IBM 8775 Word Processor, handle mail, fax machine, telephone calls, copying (Xerox). Prepare and batch Account Payable report. Maintain files, produce graphic displays, input payroll data, perform administrative duties of Office Manager, when necessary."

In that capacity, the Claimant reported to W. H. Holland, Senior Director-Financial Planning, as did all of the administrative personnel in the Financial Planning Department. After Holland retired from Conrail on December 31, 1998, the Claimant performed a reduced level of administrative work for J. W. Rogers, Senior Director Budgeting and Forecasting and M. J. Brisgone, Director Operating Budgets, but eventually her position was abolished effective May 31, 1999.

The Organization filed the instant claim on July 24, 1999, alleging that, effective June 1, 1999, after abolishing the Claimant's former Secretary position, the Carrier allegedly assigned the duties of her position to a non-Agreement covered employee. The Carrier responded by letter dated September 16, 1999, denying the claim and essentially reiterating factual assertions in a pre-claim letter dated June 14, 1999 which has never been refuted by the Organization. Thus, the record shows that by the time

her position was abolished, the Financial Planning Department had shrunk from 45 to 23 employees and the Claimant was performing virtually no stenographic or word processing duties and only a limited amount of telephone answering, mailing, faxing and filing. Further, the Carrier's on-property assertions that after J. Rogers was appointed to the position of AVP Financial Planning with Conrail-SAA and M. Brisgone was appointed to the position of Senior Director-Operations Planning with Conrail-SAA, they answered their own telephones and handled their own correspondence and word processing needs.

In short, the Carrier's assertions are unrefuted that the minimal remaining duties previously performed by Position No. 09-009-2194-0059-7 were absorbed by employees of the respective Railroads, as of June 1, 1999, the effective date Conrail was acquired by CSXT and NS. The Organization has failed to provide probative evidence that any meaningful part of the duties which the Claimant performed prior to the abolishment of her Agreement-covered position were transferred to or performed by non-Agreement individual(s) after the abolishment of her position. Bare assertions are insufficient to carry the burden of making out a prima facie case or to survive the Carrier's motion to dismiss for lack of proof.

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.