

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36419
Docket No. CL-36477
03-3-00-3-735**

The Third Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Duluth, Missabe & Iron Range Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12680) that:

- 1. Carrier violated the TCU Clerical Agreement at the Ore Docks in Duluth on Thursday, December 4, 1997 and each and every day thereafter, when it required and/or permitted a person, not covered by the Clerks Agreement, Mr. John F. Brosius, at the Duluth Ore Docks to perform the work of compiling preventive maintenance information and entering that information into a Data Base, typing out documents and distributing to employees and other miscellaneous clerical duties as assigned.**
- 2. Carrier shall now be required to compensate the senior available extra or unassigned clerk without forty (40) hours of straight time work per week, eight (8) hours pay at the pro rata rate of the Preventative Maintenance Clerk position, or if none are available, the senior available regularly assigned clerk eight (8) hours pay at the punitive rate of their regular position or at the punitive rate of the Preventative Maintenance Clerk position, which ever is higher, for Thursday, December 4, 1997 and each and every day thereafter that the violation is allowed to continue.”**

FINDING\$:

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.

On February 1, 1998, the Organization filed a claim alleging that the Carrier violated the applicable Scope Rule by purportedly assigning work, consisting of updating preventive maintenance materials and entering maintenance information into a computerized data base, to persons not covered by the Clerical Agreement. The Organization contends that the violation commenced on December 4, 1997. On behalf of the Senior Available Extra Unassigned Clerk, the Organization seeks eight hours of straight-time pay per day so long as the alleged violation continues.

A careful perusal of the voluminous record discloses that the claim herein is virtually identical to the claim presented to the Board in Third Division Award 36418. The only difference is that, in this claim, the Organization charges that a stranger to the Agreement assisted the Supervisor of Operations and Maintenance in setting up and testing the Main Saver computer program. The record is unclear about whether the person helping the Supervisor was a Carrier employee or an outsider but, in any event, the person was not covered by the applicable Clerical Agreement.

In Award 36418 we ruled that the Supervisor of Operations and Maintenance was performing program preparatory work that had never been assigned to members of the clerical craft. Because Clerks had never performed the preparatory work, the work was not reserved to Clerks by Rule 1(c). It logically follows that the work performed by the person assisting the Supervisor in setting up the Main Saver program is also preparatory work that never accrued to the clerical craft under Rule 1(c).

For the reasons more fully set forth in Award 36418 we must deny this claim for lack of proof.

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 17th day of March 2003.