

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36545
Docket No. CL-36623
03-3-01-3-117**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood (GL-12707) that:

- (1) Carrier violated the TCU Clerical Agreement in the Engineering Department at Proctor on Thursday, September 23, 1999 and each and every day thereafter, when it required and/or permitted a person, not covered by the Clerks’ Agreement, Mr. Gene Berg, WE&TM Shop Foreman, at Proctor to perform Mainsaver tasks such as compiling preventive maintenance information and entering that information into a computer data base, retrieving and printing 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 Engineering Department Clerk position, or if none are available, the senior qualified available regularly assigned Engineering Department Clerk, eight (8) hours pay at the punitive rate of their regular position for Thursday, September 23, 1999, and each and every day thereafter that the violation is allowed to continue.”**

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.

In this claim, the Organization alleges that, beginning September 23, 1999, a BMW Foreman, who is not covered by the applicable Clerical Agreement, began to perform certain work in connection with the new computer system called "Mainsaver." Specifically, the claim contends that the foreman compiled preventive maintenance information and entered that information into the computer data base, and then retrieved and printed out documents for distribution. During the on-property handling, the Organization further asserted that this employee did the same with corrective action work orders.

According to the Organization, the purported assignment of such work was a violation of Rule 1, which states in pertinent part as follows:

"RULE 1 Scope

- (a) . . . clerical workers of all description . . . including operators of all office . . . equipment requiring special skill or training, such as typewrites, calculating machines . . . recording machines . . . and other such machines as now used in performance of clerical work or may hereafter be adopted for performance of clerical work. . . .
- (c) Positions or work coming within the scope of this agreement belong to the employees covered thereby and nothing in this agreement shall be construed to permit the removal of positions or work from the application of these rules, except by agreement between the parties signatory hereto.

- (d) When a mechanical device is used for the purpose of performing work coming within the scope of this agreement, the operation of such device for the performance of that work will be assigned to positions covered by this agreement.”

The Organization further contends that clerks under this Agreement performed the same duties using the previous computer system, ELKE, that the BMW foreman now performs with the Mainsaver. That the tasks are now performed using the Mainsaver system does not change the nature of the clerical work. In the Organization’s view, the provisions of Rule 1 plainly dictate that work performed by covered employees may not be given to anyone outside the scope of the Agreement.

The Carrier argues that two of the principal functions of the Mainsaver system are preventive maintenance and corrective action. Preventive maintenance work orders for routine repairs are automatically generated at set intervals. The Carrier states that the reporting of such information has always been the work of foremen and mechanics, although such work was previously done on paper rather than through a computerized system.

The Carrier further points out that corrective action work orders are required for unscheduled repairs. Before the advent of the Mainsaver system, this information, too, was written on paper and became part of the maintenance records file maintained by the shop foreman. The Carrier submits that corrective action work orders and preventive maintenance work orders were not generated by clerical forces even when the ELKE system was being used, and therefore no claim can be made that this is work reserved by Rule or practice to clerical employees.

After careful review of the lengthy record presented in this case, the Board finds that two prior Awards establish controlling precedent. In Third Division Awards 36418 and 36419, involving these same parties, the Board was faced with virtually the same fact pattern and alleged Rule violations as we have here. In both cases, the Board found that the Organization failed to establish that the use of non-clerical employees to perform certain specific tasks using the new Mainsaver computer system amounted to a violation of the positions and work Scope Rule.

On this record, we see no reason to deviate from the rationale set down in Awards 36418 and 36419 or from the precedent established by those two prior cases. As in those

cases, the Organization did not prove that this was a matter of substituting Mainsaver work for work formerly performed under the ELKE system by clerical employees. On the contrary, it appears that the tasks involved in conjunction with the maintenance and repair records have previously been performed by non-clerical employees. Introduction of the Mainsaver computer system to automate or streamline these functions does not change the character of the work at issue or dictate performance thereof by clerical forces.

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 8th day of May 2003.