

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36714
Docket No. CL-36361
03-3-00-3-612**

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
(Duluth, Missabe & Iron Range Railroad Company

STATEMENT OF CLAIM:

**"Claim of the System Committee of the Brotherhood (GL-12647)
that:**

- 1. Carrier violated the TCU Clerical Employees' Agreement at the Duluth Ore Docks and at Two Harbors beginning on Friday, March 23, 1999, and continuing every day thereafter that Carrier allows and/or requires anyone other than employees covered by the Scope Rule of the above mentioned Agreement to perform any duties previously performed by Scope-covered employees in the Asset Management Department at the Duluth Ore Docks and at Two Harbors, MN, including but not limited to: locating and ordering materials; handling material requisitions and purchase orders; receipt of materials from vendors; accepting material from vendors; loading and unloading materials; storing materials until needed by using departments; all related record keeping, tracing, correspondence; related data entry work; inventorying; disbursing; supervision, and any other handling as related to Carrier's vendor stocking process.**
- 2. Carrier shall now be required to return all work to the employees covered by the scope of the Effective Working Agreement and to also compensate C. L. Gagne, Warehouse Foreman at the Duluth Ore Docks, and M. T. Ward, Warehouse Foreman at Two Harbors, eight (8) hours pay each at the punitive rate of the Warehouse Foreman position for**

Friday, March 23, 1999, and every day thereafter until the work is returned. The amount claimed is for each day Carrier violates the Agreement as described herein and shall be in addition to all other earnings received by claimants on these dates and subject to future wage increases.”

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.

Procedural objections to the Board's jurisdiction over this matter raised by the Carrier are dismissed for reasons set forth in Fourth Division Awards 5074, 5075 and 5076.

Turning to the merits, the facts are not in material dispute. Prior to the claim dates, the Carrier maintained fully-stocked storehouses at its facilities at Duluth and Twin Harbors, Minnesota. Claimants C. L. Gagne at the Duluth Ore Docks and M. T. Ward at Two Harbors, Agreement-covered employees in the position of Warehouse Foreman, were regularly assigned at those warehouses to perform the work of ordering, receiving, unpacking, stocking, inventorying and distributing various material, i.e., pillow blocks, bearings, adapters, end plates, end plate seals, and triple seals, to maintenance crews. Some time prior to the claim dates, the Carrier entered into a “Vendor Stocking” arrangement with Bearing Headquarters for “as-needed/just-in-time” delivery of such materials, with the expressed goal of eventually achieving “zero-balance for DMIR inventory.”

As part of the phase-in to this new "zero-balance" Vendor Stocking arrangement with Bearing Headquarters, commencing March 23, 1999, the Carrier allowed the outside vendor to collect items and materials the Carrier had on hand in its inventory in the warehouses staffed by the Claimants and remove said Carrier-owned materials to warehouses maintained by Bearing Headquarters, where Bearing Headquarters' employees thereafter performed the work of securing, storing and distributing those Carrier-owned items. In that connection, the following assertions in the initial claim letter were never effectively refuted by the Carrier on the property:

"On Friday, March 23, 1999 Manager Gary Simonsen arrived at the Two Harbors storehouse with two salesmen from Bearing Headquarters. The three of them proceeded to take many items off the shelves at the Two Harbors storehouse and placed them on pallets in the storehouse. After they had all the items they wanted stored at the Bearing Headquarters Store in Cloquet, MN they instructed the Warehouse Foreman to load the pallets, with a fork truck, into a pick-up truck that one of the salesmen from Bearing Headquarters had driven to Two Harbors. They made two trips from Two Harbors, MN to Cloquet, MN on that day and one more trip several weeks later. All the material that was taken to the Bearing Headquarters store in Cloquet, MN is material that was storehouse stock material and still shows on the books as material in stock at the Two Harbors storehouse. They have also performed this same type of process at the Duluth Ore Dock Store."

In our considered judgment the Carrier's unilateral removal from regular performance by the Claimants of the work they formerly performed on these very materials (pillow blocks, bearings, adapters, end plates, end plate seals, and triple seals) in the Carrier's storehouses and reassigning that work on those materials to the employees of the outside vendor was a patent violation of Rule 1 of the Agreement. See Third Division Award 33044, Public Law Board No. 4848, Award 23 and Public Law Board No. 4596, Award 3. As the Board and virtually every other competent arbitral tribunal which has considered the issue has held, the Carrier's defense of "exclusivity" is of no avail under a "positions and work" Scope Rule. See Third Division Awards 33148 and 29401; see especially Public Law Board No. 5554, Awards 2 and 10 (involving the same Parties and identical language in the Ore Dock Agreement).

Based on the facts of record and the plain language of Rule 1, the claim is sustained for one call per day to be divided equally between the Claimants for the period of time commencing March 23, 1999 and continuing until such time as the Agreement-covered work of securing, storing and distributing the Carrier-owned pillow blocks, bearings, adapters, end plates, end plate seals, and triple seals is restored to performance by the Claimants; or all such time as those previously purchased items and materials removed from the Carrier's storehouses and relocated to Bearing Headquarters has been drawn down to a "zero-balance."

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 17th day of September 2003.