

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37559
Docket No. CL-37228
05-3-02-3-213

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: ((Transportation Communications International Union
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-12809)
that:

I. The following claim is hereby submitted to the Company on behalf of Claimant Mr. David Avery (ST-97-58):

- (A) The Carrier violated the TCU Clerical Rules Agreement, particularly Rules 1 (Scope), 13, 15, 18, 21, 34, 47, and Side Letter #3 Stabilization Agreement of February 7, 1965, as amended on or October 17, 1984, and all other rules of the Agreement, when on about June 23, 1997 they abolished position MC #17, TSR (Tower Operator), PT Tower, Portland, Maine, and then assigned the duties (but not limited to those) shown on "Exhibit A", to various non-clerical employees (shown on Exhibit A) on a continual daily basis.
- (B) Each Claimant should now be allowed eight (8) hours punitive pay based on pro-rata hourly rate of pay, commencing June 23, 1997, and continuing for each and every day thereafter, eight (8) hours per day, seven (7) days per week, until this violation is corrected.

- (C) In order to terminate this claim, the respective duties must be assigned to clerical personnel at Rigby Yard, Portland, Maine.
- (D) That the successors, if any, to the above position be considered as Claimants in this claim.
- (E) This claim is presented in accordance with Rule 38 of the Agreement, and should therefore be allowed.

II. The following claim is hereby submitted to the Company on behalf of Claimant Mr. Bruce Crockery (ST-97-59)

- (A) The Carrier violated the TCU Clerical Rules Agreement, particularly Rules 1 (Scope), 13, 15, 18, 21, 34, 47, and Side Letter #3 Stabilization Agreement of February 7, 1965, as amended on October 17, 1984, and all other rules of the Agreement, when on or about June 23, 1997, they abolished position MC#16, TSR (Tower Operator), PT Tower, Portland, Maine, and then assigned the duties (but not limited to those) shown on "Exhibit A", to various non-clerical employees (shown on Exhibit A) on a continual daily basis.
- (B) Each Claimant should now be allowed eight (8) hours punitive pay based on pro-rata hourly rate of pay, commencing June 23, 1997, and continuing for each and every day thereafter, eight (8) hours per day, seven (7) days per week, until this violation is corrected.
- (C) In order to terminate this claim, the respective duties must be assigned to clerical personnel at Rigby Yard, Portland, Maine.

- (D) That the successors, if any, to the above position be considered as Claimants in this claim.
- (E) This claim is presented in accordance with Rule 38 of the Agreement, and should therefore be allowed.

III. The following claim is hereby submitted to the Company on behalf of Claimant Mr. J. J. Foley, (ST-97-60).

- (A) The Carrier violated the TCU Clerical Rules Agreement, particularly Rules 1 (Scope), 13, 15, 18, 21, 34, 47 and Side Letter #3 Stabilization Agreement of February 7, 1965, as amended on October 17, 1984, and all other rules of the Agreement, when on or about June 23, 1997, they abolished position MC#14, TSR (Tower Operator), PT Tower, Portland, Maine, and then assigned the duties (but limited to those) shown on "Exhibit A", to various non-clerical employees (shown Exhibit A) on a continual daily basis.
- (B) Each Claimant should now be allowed eight (8) hours punitive pay based on pro-rata hourly rate of pay, commencing June 23, 1994, and continuing for each and every day thereafter, eight (8) hours per day, seven (7) days per week, until this violation is corrected.
- (C) In order to terminate this claim, the respective duties must be assigned to clerical personnel at Rigby Yard, Portland, Maine.
- (D) That the successors, if any, to the above positions be considered as Claimants in this claim.

- (E) The claim is presented in accordance with Rules 38 of the Agreement, and should therefore be allowed.

IV. The following claim is hereby submitted to the Company on behalf of Claimant Mr. Joseph Cooper, (ST-97-61).

- (A) The Carrier violated the TCU Clerical Rules Agreement, particularly Rules 1 (Scope), 13, 15, 18, 21, 34, 47 and Side Letter #3 Stabilization Agreement of February 7, 1965, as amended on October 17, 1984, and all other rules of the Agreement, when on or about June 23, 1997, they abolished position #MC 15, TSR (Tower Operator), PT Tower, Portland, Maine, and then assigned the duties (but not limited to those) shown on "Exhibit A", to various non-clerical employees (shown on Exhibit A) on a continual daily basis.
- (B) Each Claimant should now be allowed eight (8) hours punitive pay based on pro-rata hourly rate of pay, commencing June 23, 1997, and continuing for each and every day thereafter, eight (8) hours per day, seven (7) days per week, until this violation is corrected.
- (C) In order to terminate this claim, the respective duties must be assigned to clerical personnel at Rigby Yard, Portland, Maine.
- (D) That the successors, if any, to the above position be considered as Claimants in this claim.
- (E) This claim is presented in accordance with Rule 38 of the Agreement, and should therefore 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.

The Organization filed the four claims at issue in this case on August 28, 1997. The claims were discussed in conference on October 28, 1997. By letter of November 4, 1997, the Carrier denied all four claims. In its denial of the claims, the Carrier asserted that the matter at issue was not properly characterized by the Organization as removing work from covered employees. Rather, the Carrier maintained:

"The technology has now progressed to the point that the TOM's are not only in control of the signals and switches, they are now able to activate that control. The middleman work, which was required of PT Tower Operators, has been eliminated."

The Organization filed its Notice of Intent to appeal the Carrier's decision to the Third Division for determination on March 7, 2002, some 52 months after the Carrier's final denial on the property. Notwithstanding the lateness of the filing, the Parties agreed to waive the procedural matter of the time limits.

Despite this procedural waiver, the case must fail on its merits. The Board notes that the matter has been previously well decided, in particular by Third Division Award 30038. In that Award, the Board wrote:

"In consonance with other Awards in similar circumstances, the Board finds here that there was, in fact, no transfer of work. The data involved were originated by the Assistant Trainmaster before the introduction of the Locomotive Management System and the Assistant Trainmaster continues in control thereof. The introduction of the new program, together with making computer keyboards and screens available, simply eliminates the double process of handwriting data and then having it entered into the computer. . . . [The] sole function lost by the Claimants is entry of data. . . ."

In the present case as in Award 30038 cited above, the new technology put in place by the Carrier has not transferred the work originally performed; rather it caused the work at issue to disappear. As the Board previously noted, "that some part of a clerical function was eliminated is obvious, but not prohibited." Accordingly, the instant claims must be denied in their entirety.

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 20th day of July 2005.