

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37638
Docket No. CL-37157
05-3-02-3-137**

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
(Duluth, Missabe and Iron Range Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12803) that:

- 1. Carrier violated the TCU Clerical Employees Agreement at Proctor on Thursday, January 25, 2001, when it required and/or permitted a person, not covered by the Clerical Employees agreement, Carman Del Kolenda, to perform the work of hauling three (3) wheel sets from the Proctor Car Shop to Keenan.**
- 2. Carrier violated the TCU Clerical Employees Agreement at Proctor on Monday, January 29, 2001, when it required and/or permitted a person, not covered by the Clerical Employees Agreement, Carman Del Kolenda, to perform the work of hauling a rail car truck from the Proctor Car Shop to Keenan.**
- 3. Carrier violated the TCU Clerical Employees Agreement at Proctor on Thursday, February 1, 2001, when it required and/or permitted a person, not covered by the Clerical Employees Agreement, Carman Del Kolenda, to perform the work of hauling a rail car truck from Keenan to the Proctor Car Shop.**
- 4. Carrier shall now be required to compensate the senior qualified available extra or unassigned clerical employee-without forty (40) hours of straight time work for the week, eight (8) hours pay at the pro rata rate of the Truck Driver position or if none are available, the senior qualified available regularly assigned clerical employee, eight (8) hours pay at the punitive rate of the Truck**

Driver position or the rate of his regular assigned position, whichever is higher, for Thursday, January 25, 2001, Monday, January 29, 2001, and Thursday, February 1, 2001, which he would have received had he been allowed to perform the above mentioned work.”

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.

As Third Party in Interest, the Brotherhood of Railway Carmen was advised of the pendency of this dispute, but chose not to file a Submission with the Board.

This case is not one of first impression. A similar claim filed by the Organization resulted in Third Division Award 37120. The facts, however, are not identical to those found in the earlier case. The work at issue in that case was being performed by BMW-represented employees and there was no evidence on the record to contradict the Organization’s contention that the work at issue was “historically assigned to TCU-represented Truck Drivers.”

The specific work at issue here is that of hauling wheel sets between the Proctor Car Shop and Keenan. The Organization provided statements in which several employees attest that “It has always been the assigned duties of the truck driver positions in the asset management department to pick up and deliver rail car wheel sets and trucks to various locations for the car department.” In opposition to that contention, the Carrier provided Carrier management statements that maintain that the Carrier has routinely used “the most available sources for delivery of wheel sets.”

While it is clear on this record that clerical employees performed some of the wheel set hauling work at issue, it is not clear that such work was reserved exclusively to them. The record in this case suggests that Carmen, who are also represented by the TCU, have been used as well.

Moreover, contrary to the Organization's contention, there is no evidence that the Carrier has artificially taken away work from TCU represented employees by reducing the number of Truck Driver positions. Rather, it is uncontroverted on this record that the Carrier instituted technological changes in the form of a wheel-truing machine that reduced the necessity to truck wheel sets from the Diesel Shop and the Car Shop as frequently as previously had been the case.

In sum, the Board does not find that the Organization met its burden of persuasion in this case. Accordingly, the claim must be denied.

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 19th day of October 2005.