

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37757
Docket No. CL-38391
06-3-04-3-355

The Third Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(BNSF Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-13047)
that:

1. Carrier violated the Working Agreement when it allowed or assigned a stranger to the TCU Agreement, George Roman, contract labor, to meet the UPS carrier at the AOB dock and sign for package at 0815 hours on May 10, 2000.
2. Carrier must now compensate clerical employee D. S. Brown, eight (8) hours pay at the straight time rate for May 10, 2000.”

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 asserts that the Carrier violated the Scope Rule when on the morning of May 10, 2000 it allowed an outside contract employee to sign for and receive a United Parcel Service (UPS) package at its Administrative Office (AOB) dock in Forth Worth, Texas. The work of signing for express packages at the AOB, it contends, is one of the responsibilities of Position 5053, incumbent D. S. Brown. Because Rule 1 – SCOPE, effective December 1, 1980, is a “positions and work” Scope Rule as distinguished from a “general” Scope Rule, it reserves all work to Clerks as it existed on the effective date of the Rule. Accordingly, as affirmed by numerous Awards of this Board, the Carrier’s unilateral removal of the disputed work from the jurisdiction of the clerical craft and its transfer elsewhere was a violation of the Agreement.

The Carrier contends that the claim is frivolous - the incident in dispute was de minimis. The time spent by the outside contract employee in signing for this UPS package was less than one minute. Secondly, the Organization failed to bear its burden of establishing that the work at issue belonged exclusively to covered employees. Nowhere does it refute the Carrier’s contention that employees of outside contractors have been performing mail handling work at the AOB dock facility since that building opened. The standards that the Organization must meet to make its case are clear. The Scope Rule has been consistently interpreted and applied as requiring the Organization to prove both the extent of work reservation under the Rule and to demonstrate unilateral removal and assignment to strangers of a significant portion of that work which actually was performed as of December 1, 1980. See, e.g., Special Board of Adjustment Under Appendix “K”, Awards 88 and 116.

It is apparent that if the Board were to summarize the Carrier’s unrebutted chronology of mail handling history at its headquarters, this Award would rival the length of the extensive record established herein. It asserts in detail that mail at its numerous headquarters buildings has always been handled in a mixed manner, by Clerks, outside contractors and exempt employees, and that at no building has it ever been handled exclusively by Clerks. The Organization, on the other hand, disputes those contentions, arguing that Mail Clerks have historically been responsible for handling all aspects of incoming and outgoing mail, including sorting, receiving UPS packages, delivering, etc.

Accordingly, the Board is faced with a significant and unreconciled dispute of highly relevant facts. Additionally, even if the Organization's contentions with respect to past practice are credited and those of the Carrier are discounted, however, in this instance the materiality of signing for a package, measured by the common tests of proportion, impact on the workforce, potential diminishing effect on the entire contract bargained for, deprivation or degree of hardship suffered by the Claimant, and the overall equities of the facts posed, would appear to be the rough equivalent of picking up a pencil or answering a phone. In the absence of any showing of more substantial impact, it is thus a fact pattern of precisely the type of situation the de minimis rule was meant to reach.

With the factual underpinnings of the claim in sharp dispute and the gravity of the challenged action apparently insubstantial, the Board's relish for the Organization's position is dampened. We conclude that it failed to meet the evidentiary tests laid down by controlling authority both with respect to proving the extent of work reservation and the removal of a significant portion of such work. For those reasons the claim will be dismissed.

AWARD

Claim dismissed.

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 21st day of March 2006.