

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 41734
Docket No. CL-41932
13-3-NRAB-00003-120265

The Third Division consisted of the regular members and in addition Referee Martin W. Fingerhut 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-13213)
that:

Carrier violated the TCU Agreement dated May 6, 1980 at Alliance, Nebraska, effective July 21, 2008 and continuing when Carrier assigned the duties of delivering wheels, removing bad order wheels, delivering various castings, couplers, brake beams, draft gears, etc., to the TCU Carmen.

Carrier shall now be required to compensate the three (3) section stockman positions (position 5754, 5755, 5766, and relief positions 6015, 6016) at Alliance, Nebraska for eight (8) hours at the applicable pro rata section stockman rate, above and beyond any other compensation received, from each shift, three (3) shifts each day, seven (7) days per week, beginning July 21, 2008, and continuing every day thereafter until such time the work is returned to the craft and class of employees represented by the Transportation Communications Union.”

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 essential facts of this case are not in dispute. The Carrier has maintained a car repair facility at Alliance, Nebraska, for many years. Materials and parts utilized by Carmen employed at the facility are stored both inside and outside of the shop. Carmen have historically picked up materials and parts they needed from stores kept inside the shop. Section Stock positions held by Clerks were used to deliver materials and parts to Carmen from stockpiles located outside of the shop.

On July 21, 2008, the Carrier implemented a change whereby Carmen were instructed to pick up materials needed for their own use which were stored outside of the Car Shop. The change resulted in the abolition of one clerical position and the reassignment of another clerical position to the Diesel Shop. The Organization's claim before the Board is that the Carrier's action violated the Scope Rule of the Agreement.

The Carrier, in its defense to the claim, does not dispute that if it had transferred the disputed work from the clerical craft to another craft for delivery to Carmen, it would have violated its Scope Rule with the Organization. In this case, however, the Carrier argues that the undisputed evidence shows that it only had eliminated the clerical "middlemen," i.e., the Carrier merely directed the Carmen who were to use the material to obtain it.

In reviewing the Awards submitted by the parties to the Board, it appears that the issue is not novel either to the parties or the industry. In all the cited cases, the Board concluded that a carrier does not violate the Scope Rule of an Agreement when it eliminates the "middlemen" positions, in favor of using employees who are performing the basic function of the work.

Typical of such Awards is Special Board of Adjustment, Appendix K, Award 192. In that case, a dispute between the same parties here, the Carrier had utilized clerical employees to transport train crews in Carrier-owned vehicles to and from a lodging facility. The Carrier reassigned the transportation function to members of the train crew. At the outset of that Award, the Board pointed out that an Award referred to by the Organization was “inapplicable because in that case, the Carrier retained a third party to transfer the crews as opposed to train crews transporting themselves.”

The SBA concluded:

“As this Board has ruled on numerous occasions, the scope rule does not prevent the Carrier from eliminating work which includes terminating a clerk's intermediary or middleman function.”

The Board has not been furnished with any Awards to the contrary. We have no rational basis for straying from what appears to be a well-settled principle. Accordingly, the claim will 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 30th day of September 2013.