

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43789
Docket No. SG-44003
19-3-NRAB-00003-170058**

The Third Division consisted of the regular members and in addition Referee Andria S. Knapp when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation:

Claim on behalf of R.D. Carr, for re-establishment of his former Office Engineer position through the advertisement and award process, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule and Appendix FF, when, on July 3, 2015, it abolished the Claimant’s Office Engineer position, and replaced it with a different craft’s Clerk position not covered under the Scope Rule, thereby causing the Claimant a loss of work opportunity. Carrier’s File No. 2015-193032. General Chairman’s File No. DV08211552. BRS File Case No. 15605-CSC(N).”

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.

This case arose on July 3, 2015, when the Carrier abolished the Claimant's position of Office Engineer in Avon, Indiana. According to the Carrier, the primary duties of the job had been automated, eliminated or transferred out of the Avon office; the remaining duties were non-exclusive and were assigned to clerks in a different craft in Jacksonville, Florida. The Organization filed this claim by letter dated August 28, 2015, alleging that the Carrier had violated the Scope Rule and Appendix FF. The Claimant held an Independent Signal Foreman's position on Work Group 7XL2, with the primary responsibilities of "Office Duties." The claim described those duties: "preparing dig tickets for projects, ordering office supplies, tool orders, safety orders, new foreman's pro cards, help foreman with questions on paperwork, safety, payroll, assist managers and safety teams with any special projects. Maintain a centrally located office for access to all Teams and Managers. Keep inventories on storage containers used to keep project material, vehicle tools, safety supplies, and general materials." The record includes a statement from the Claimant with his job description attached:

"On May 21 2013 I was awarded foreman of Team 7XL2 that was put up to replace retiring office engineer Phil Bigelow who held the position for over 15 years.

I worked with Mr. Bigelow learning the tasks associated with the position for four weeks in an office in Willard, OH and Avon, IN.

As an office engineer I worked in an office in Avon, IN building 5 second floor for 2 years when my position was abolished July 2 2015, with my daily tasks and responsibilities listed on attached page."

The Carrier declined the claim, stating in its February 11, 2016, response to the Organization's appeal:

"It is the Carrier's position that the office engineer position contained duties covered both by the BRS scope as well as the scope clause Rule 1 of the TCU clerical agreement. The duties covered by the BRS agreement are now performed by signal classifications in the field. For example construction notes are now entered on a tablet in the possession of the signal foreman, and then transmitted to supervision. As a further example, "foreman assistance" can be provided by the signal managers,

construction engineers, or other signal foremen in the field, and is not work that accrues exclusively to a BRS represented employee. . . .

It was the Carrier's determination that the preponderance of duties remaining as the result of technological and organization advances were not work that required the skill of a qualified signal employee and are contained within the duties and responsibilities contained in Rule 1 *Scope* of the TCU Clerical agreement [citing the provision]"

The parties having been unable to resolve the dispute through the normal claims process, the matter was appealed to the Board for final and binding adjudication.

The Organization argues that the Office Engineer position is covered under the Scope Rule, specifically the language "... work not included within this Scope which is being performed on the property of any former component railroad by *employees represented by the Brotherhood of Railroad Signalmen will not be removed from such employees at the location at which such work was performed by past practice or agreement on the effective date of this Agreement.*" (Emphasis added.) The language is simple and clear: it mandates that work performed by BRS-represented employees will not be removed from the location at which the work was being performed. The Office Engineer position has been held exclusively by BRS-represented employees for years. Accordingly, the Carrier cannot be permitted to unilaterally abolish an established position held exclusively by BRS-represented employees and replace it with another craft's Clerk position covering the same class of work. The NRAB has upheld on numerous occasions the principle that Agreement language must be applied as written. The Scope rule is clear and unambiguous. It must be adhered to, and not unilaterally changed by the Carrier. Permitting the Carrier to do so in this case would add an exception to the negotiated provisions of the Agreement that does not exist and that the parties did not agree to.

According to the Carrier, the claim should be denied because the Claimant performed non-exclusive work generally replaced by technology, and the Organization has not fulfilled its burden of proof. Many of the Claimant's duties were replaced by technology, and the Board has supported the use of technology to automate and provide time saving devices to work processes. The preponderance of duties remaining after the introduction of technology was not work that required the skills of a qualified signal employee. They are general office duties that are not exclusive to the Claimant's location and that most employees can perform, such as tracking information with spreadsheets,

administering vehicles and ordering supplies. Moreover, the duties at issue are not scope-covered and are not exclusive to the craft. The Organization is attempting to use the Scope Rule to protect office work, which was never intended to fall under the scope of the signalmen's agreement. The Carrier has the right to abolish the position when it is no longer needed. Appendix FF offers no protection to the Claimant in preserving these duties to the signal craft. The Organization has not met its burden of proof. It has failed to prove that the Carrier could not abolish the Claimant's position and assign or perform the work in another manner. The Scope Rule allows a signal employee to retain work historically performed by signalmen at a specific location, based on past practice. But it is the Organization's burden to establish the past practice. The only evidence it has submitted is an unsubstantiated, self-serving statement from the Claimant, which is not sufficient to establish either that Claimant's predecessor held the job for 15 years or even that it was held by a BRS-represented employee. For all these reasons, the claim must fail for lack of probative evidence and the Organization's failure to meet its burden of proof.

This case requires an interpretation of the Scope Rule and Appendix FF of the parties' Agreements. The Scope Rule of the 1998 Agreement states:

"It is understood and agreed in the application of this Scope that any work specified herein which is being performed on the property of any former component railroad by employees other than those represented by the Brotherhood of Railroad Signalmen may continue to be performed by such other employees at the location at which such work was performed by past practice or agreement on the effective date of this Agreement; and it is also understood that work not included in this Scope which is being performed on the property of any former component railroad by employees represented by the Brotherhood of Railroad Signalmen will not be removed from such employees at the location at which such work was performed by past practice or agreement on the effective date of this Agreement."

The pertinent language is the second half of the Rule, which states, in effect, that work that would not otherwise be Scope covered but that has been performed by BRS-represented employees "by past practice or agreement..." *"... will not be removed from such employees at the location at which such work was performed."* (Emphasis added.)

Appendix FF of the CSXT Northern Agreement states in pertinent part:

“Except as otherwise may be determined by the National Mediation Board as to the craft or class in which office Engineers and Material Engineers in the offices of the Supervisors may belong, the Carrier recognizes these positions as falling within the Signalman craft and agrees that vacancies in such positions shall, effective September 1, 1981, be filled by appointment by qualified employees represented by the BRS who shall be subject to the maintenance of membership provisions of the Union Shop Agreement. In all other respects these positions shall remain exempt from the Agreement effective September 1, 1981.”

The Board is not persuaded by the Carrier’s interpretation of Appendix FF, that it exempts the position of office engineer from the 1981 Agreement, and that exemption was carried over into the 1998 Agreement. In Appendix FF, “the Carrier recognizes these positions [office Engineers and Material Engineers] as falling within the Signalman craft...” That is sufficient to bring the position of Office Engineer within the Scope Rule.

The Scope Rule is clear and direct: work that has historically been performed by BRS-represented employees “*will not be removed* from such employees at the location at which the work was performed by past practice or agreement...” There is no dispute that the Carrier abolished the position of Office Engineer in Avon, Indiana. The evidence in the record is that the position had been held by the Claimant for two years and by his predecessor for fifteen years before that, which is enough to establish a past practice.¹ This is enough to establish a *prima facie* violation of the Scope Rule. The burden of proof then shifts to the Carrier to establish that its decision was not a violation.

Management certainly has the right to adapt or modify or even eliminate employees’ duties and responsibilities in light of technological advances, up to the point

¹ The Carrier argues that the statement from the Claimant does not constitute probative evidence. But neither the Organization nor the Claimant is in a position to “prove” that information: only the Carrier has the records of other employees’ jobs or how long they were held. Claimant’s statement was, however, sufficient for the Carrier to determine whether Mr. Bigelow had held the position and for how long. There is no rebuttal in the record from the Carrier of the Claimant’s statement, and the Board will accept it as an established fact.

of abolishing positions. But where such actions conflict with the Scope Rule, the Carrier must be prepared to justify its actions with verifiable evidence. The record includes a copy of the Claimant's "Office Duties," and there is no evidence to indicate that those were not his duties. The Carrier justifies abolishing the Claimant's position on two fronts: (1) many of the Claimant's job duties were replaced or eliminated as a result of technology, and (2) the duties that remained were non-exclusive and did not require a qualified signalman to perform. But the Carrier has submitted no evidence, only assertions, in support of its position—and the Board has held on numerous occasions that assertions are not the same as evidence. Presumably, someone in management did an analysis of Claimant's job duties to reach the conclusion that the position could be eliminated. But there is no evidence of that in the record. Without any probative evidence from the Carrier to support its basis for eliminating Claimant's position, the Organization's *prima facie* case remains unrebutted, and the claim must be sustained.

AWARD

Claim sustained.

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 16th day of July 2019.