

ARBITRATION COMMITTEE

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In the Matter of Arbitration	:	<u>OPINION AND AWARD</u>
Between	:	
Transportation - Communications	:	Pursuant to Article I,
International Union	:	Section 11 of New York
And	:	Dock Conditions
Kansas City Southern Railway Company	:	ICC Finance Docket No. 32167
	:	Case 2
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Hearing Date: September 30, 1998  
Place of Hearing: Kansas City, Missouri

Member of the Committee:

Carrier Member:	John Morse
Organization Member:	Phillip T. Trittel
Neutral Member	Eckehard Muessig



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BACKGROUND

In November 1992, application with the Interstate Commerce Commission (ICC) was filed by Kansas City Southern (KCS) for control of MidSouth Rail Corporation (MSRC). The acquisition was approved in June 1993, Finance Docket #32167, and under the terms of the acquisition, New York Dock Protective Conditions were imposed.

The Organization has framed the question at issue as follows:

1. Did the unilateral transfer of Customer Service Requests work performed by MidSouth Rail Corporation clerical employees at Bossier City, Louisiana to employees of the Kansas City Southern Railway Company at Shreveport, Louisiana without notice under Article I, Section 4 of New York Dock Conditions constitute a violation of New York Dock Conditions?
2. If the answer to Question No. 1 is in the affirmative, shall the Carrier be required to pay eight (8) hours pay to every available extra board and furloughed employee on the MidSouth roster until the proper notice is issued under New York Dock Conditions?

The Carrier, for its part, presented the issue before the Board by providing the statement of claim progressed by the Organization. That reads as follows:

Claim on behalf of every available Extra Clerk and every furloughed employee for eight (8) hours pay at time and one-half commencing February 14, 1997 and continuing each date thereafter account Carrier allegedly transferred clerical work from MidSouth Rail to KCS.

The claim at issue here arose on April 4, 1997. It asserts that, on September 4, 1996, Carrier official J. D. Talley issued instructions that the Carrier's Bossier Operations Center on the MSRC would be a contact point for customers. The claim further states that, on February 11, 1997, the Organization discovered that "customer service calls concerning customers on MidSouth Rail Corporation were being fielded in Shreveport, Louisiana, on the Kansas City Southern Railroad." Accordingly, the claim contends that, because KCS employees in Shreveport, Louisiana handled calls from customers of the MSRC, the

Carrier violated New York Dock Conditions because it did not provide proper notice of the transfer of work. Additionally, the claim asserts that the Carrier violated Scope Rule 1. The Organization states that the claimed work had been performed exclusively by MSRC employees before the MSRC was purchased by KCS in 1993.

Before addressing the issues here, it is apparent that the Organization has dropped its Scope Rule claim. In any event, this would not have been the proper forum for such a claim.

#### FINDINGS AND OPINION


Turning then to the question and claim before the Board, we find that the Organization has not met its burden of proof. Indeed, the Claimant failed during the presentation of his initial claim and, continued to fail as the claim was progressed on the property, to provide the key document on which he has relied, namely the September 4, 1996 "Instructions." Moreover, the statements provided by the Organization in its letter of July 28, 1998 are inconclusive as to what work was taken away, time involved, etc.

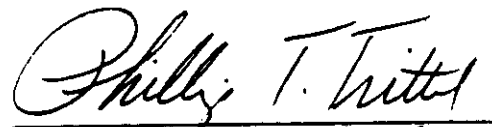
The Organization bears the burden of proof to establish by probative evidence the validity of its claim. It has failed to meet its burden in this instance.

#### AWARD

The claim is denied.

  
John Morse  
Carrier Member

  
Eckehard Muessig  
Neutral Member

  
Phillip T. Trittel  
Organization Member

Dated: 11-30-98