

PUBLIC LAW BOARD NO. 4848

In the Matter of:)	National Mediation Board
)	Administrator
TRANSPORTATION-COMMUNICATIONS)	
INTERNATIONAL UNION,)	
)	
Organization,)	
)	
and)	Docket No. 23
)	Award No. 23
THE CHICAGO AND NORTH WESTERN)	
TRANSPORTATION COMPANY,)	
)	
Carrier.)	

Hearing Date: May 9, 1991
Hearing Location: Chicago, Illinois

MEMBERS OF THE BOARD

Employees' Member: William R. Miller
Carrier Member: Joan M. Harvieux
Neutral Member: John B. LaRocco

ORGANIZATION'S STATEMENT OF CLAIM

1. Carrier violated the effective agreement when on various dates, as set forth below, it contracted with outsiders for the performance of storehouse work at Council Bluffs, Iowa, which is reserved to employees covered by said agreement;

2. Carrier shall now compensate the following named employees eight (8) hours' pay at the time and one-half rate of their respective positions for each of the dates set forth below:

E. L. Stuart: May 3, 4, 5, 16, 17, 19, 22, 25, 26 and 30, 1989.

K. W. Clark: May 2, 5, 8, 12, 15, 19, 22, 26, 29, June 2, 5, 9, 12, 16, 19, 23, 26, 30, July 3 and 7, 1989.

A. J. Arrick: May 3, 4, 5, 16, 17, 19, 22, 25, 26, 30, June 7, 12, 13, 15, 21, 26, 29, July 6, 12, 17, 19, 24, 27 and 31, 1989.

P. H. Hadfield: May 3, 4, 5, 16, 17, 19, 22, 25, 26 and 30, 1989.

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T. R. Jensen: May 3, 4, 5, 16, 17, 19, 22, 25, 26, 30, June 7, 12, 13, 15, 21, 26, 29, July 6, 12, 17, 19, 24, 27, 31, August 7, 8, 9, 10, 11, 12, 13, 28, 29, 30, 31, September 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, October 1 and 2, 1989.

CARRIER'S STATEMENT OF CLAIM

Claims filed in behalf of E. L. Stuart, Position #003, Leader Order Filler, K. W. Clark, Position #008, Motor Truck Operator, A. J. Arrick, Position #013, Order Filler, P. H. Hadfield, Position #002, Steno Clerk and T. R. Jensen, Position #005, Stock Clerk, Council Bluffs, Iowa, that they each be paid eight (8) hours at the time and one-half rate for each of the following dates:

E. L. STUART: May 3, 4, 5, 16, 17, 19, 22, 25, 26 and 30, 1989.

K. W. CLARK: May 2, 5, 8, 12, 15, 19, 22, 26, 29, June 2, 5, 9, 12, 16, 19, 23, 26, 30, July 3 and 7, 1989.

A. J. ARRICK: May 3, 4, 5, 16, 17, 19, 22, 25, 26, 30, June 7, 12, 13, 15, 21, 26, 29, July 6, 12, 17, 19, 24, 27 and 31, 1989.

P. H. HADFIELD: May 3, 4, 5, 16, 17, 19, 22, 25, 26 and 30, 1989.

T. R. JENSEN: May 3, 4, 5, 16, 17, 19, 22, 25, 26, 30, June 7, 12, 13, 15, 21, 26, 29, July 6, 12, 17, 19, 24, 27, 31, August 7, 8, 9, 10, 11, 12, 13, 28, 29, 30, 31, September 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, October 1 and 2, 1989.

Organization File No. 17-90-1-15
Carrier File No. 78-90-15

OPINION OF THE BOARD

This Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act as amended; that this Board has jurisdiction over the parties and the subject matter of the dispute herein; that this Board is duly constituted by an Agreement dated December 6, 1989; and that all parties were given due notice of the hearing held on this matter.

I. BACKGROUND AND SUMMARY OF THE FACTS

The five Claimants herein hold various positions in the storehouse adjacent to the Carrier's Council Bluffs, Iowa, Diesel Shop. For the dates listed on the claim, each Claimant seeks eight hours of pay at the time and one-half rate for specified days from May, 1989 through October, 1989 when the Carrier purportedly farmed out work reserved to the clerical craft under Rule 1(a) which reads:

These rules shall govern the hours of service and work conditions of all employees engaged in the work of the crafts or classes of Clerical, Office, Station and Storehouse Employees and Station, Tower and Communication Service Employees. Positions coming within the scope of this Agreement belong to the employees covered thereby and nothing in this agreement shall be construed to permit the removal of positions or work from the application of these rules except in the manner provided in the concluding rule.

Prior to May 3, 1989, storehouse employees covered by the applicable Agreement occasionally checked the Carrier's supply of small material parts such as piping, fittings, nuts, bolts, cotter pins and fasteners. If the supply of any of these parts ran low or, more often, out, the storehouse workers ordered the appropriate number of parts using the "Repeating Purchase Requisition" form. When suppliers delivered the material, clerical workers unloaded the parts, counted the items to verify the vendor's invoice and placed the parts or the boxes of parts in bins at the front of the

storehouse. Clerks later processed the supplier's invoice for payment. If a Diesel Shop mechanical employee needed one of these small parts, the mechanic walked to the storehouse, took a box of parts and returned to his work location. Aside from the storehouse employee's occasional, physical check of inventory, the amount of these items on hand was not maintained on any paper or in any computerized inventory system.

Under this manual inventory system, the Carrier sometimes experienced a shortage of parts needed to effectuate diesel engine maintenance and repairs, which required mechanical employees to make a special trip to a local supplier to purchase the part. Obviously, this caused a loss, albeit a slight loss, of productivity of Mechanical Department employees but, more importantly, running out of a part delayed diesel engine repair and maintenance. To alleviate this problem and to eliminate the need for mechanics to walk to the storehouse to pick up small material items, the Carrier contracted with Bowman Distribution to periodically deliver these items and place the parts in new bins set up in the Diesel Shop.

After May 3, 1989, Bowman delivered the parts directly to the Diesel Shop, unloaded the parts and placed the parts in bins. The Bowman sales person periodically observed the level of parts in each bin and added parts as necessary. The Bowman invoices, which listed all material items which Bowman claimed it had delivered, were processed by clerical employees for payment.

II. THE POSITIONS OF THE PARTIES

A. The Organization's Position

Except for processing the vendor's invoices, clerical employees subject to the scope of the Agreement no longer ordered the parts, unloaded the parts, stocked bins, or maintained the physical inventory of parts after the Carrier retained Bowman. Under Rule 1(a) this work, once assigned to clerks, cannot be contracted out to persons not covered by the Agreement. Bowman employees are now performing the very work previously performed by clerks. The Bowman employee counts, unloads and stores parts in bins. Contrary to the Carrier's argument, the work has not been eliminated, but transferred to an outsider. The only change is that the bins were relocated to the Diesel Shop. Nevertheless, the storehouse work still belongs to covered employees, regardless of a change in location where the work is being performed.

The Carrier contends that the new system is more efficient because, since it hired Bowman, there has been no shortage of small materials and it is far more convenient for mechanical personnel to procure their parts from the bin in the Diesel Shop as opposed to walking to the storehouse. Even if true, efficiency is not an acceptable or recognized excuse for violating the scope rule.

B. The Carrier's Position

The relocation of the small parts bins from the storehouse to the Diesel Shop simply eliminated a "middle man" function, that is, the necessity for mechanical employees to walk back and forth between the shop and the storehouse. TCU and BN, Appendix K Board No. 102. Moreover, the disputed work had never been assigned to

clerical employees. Mechanical Department employees previously performed the work.

Bowman was the successor to prior suppliers. After Bowman began delivering parts directly to the Diesel Shop, the Carrier did not reduce the number of clerical positions in the storehouse, which demonstrates that no work accrued to Bowman employees. Put differently, the clerks did not lose any work. The Carrier's employees never maintained a computerized inventory of these parts. Even if Bowman is now maintaining its own computerized inventory so it can properly bill the Carrier, this is new work which hardly adheres to the clerical craft since it has never been assigned to clerks. The Carrier entered into a direct purchase arrangement with Bowman whereby Bowman, like many vendors, delivers supplies to the Diesel Shop.

Also, the Organization has failed to prove that clerks, to the exclusion of all others, unloaded parts at Council Bluffs. Oftentimes, this task was performed by truck drivers in the employ of outside suppliers.

Finally, even if the Carrier committed a scope rule violation, Bowman was on the property only an average of 30 to 60 minutes (and sometimes less) per visit. Thus, the remedy claimed by the Organization is excessive.

III. DISCUSSION

In the record before us, the Organization proffered sufficient evidence proving that, prior to May 3, 1989, Council Bluffs storehouse employees exclusively ordered small parts, unloaded the parts when they were delivered, periodically and

empirically checked the inventory of the parts and processed the vendor's bill for payment.¹ Even under the Carrier's interpretation of the scope rule (that is, the Organization must show exclusivity over the disputed work at Council Bluffs), Rule 1 preserved this work to the clerical craft. The question becomes whether Bowman employees usurped this work or were the tasks eliminated. The evidence of record indicates that a small portion of the work was eliminated but that most of the work continued in existence after May 3, 1989 and the Carrier permitted Bowman employees to perform this work in violation of Rule 1.

A change in the location of the storage bins cannot denigrate the work reserved to the clerical craft under the work preservation rule in the Agreement. The scope rule continues to protect the work even if the Carrier moves the work outside the Council Bluffs storehouse. If changing the location of the work covered by the Agreement was tantamount to creating new work, the Carrier could easily circumvent the scope rule by moving scope covered work to another location, either on or off the property. Therefore, when the Carrier moved the bins to the Diesel Shop, it was obligated to continue to assign clerical employees to unload the parts, count them, place them in the bins and maintain physical checks on the inventory for the purpose of ordering parts when supply of parts ran low or was exhausted.

¹The Board understands that clerks processed the vendors' invoices both before and after the Carrier retained Bowman Distribution. However, as discussed later in this Opinion, a change in how Bowman invoices were processed after May 3, 1989 has a bearing on the outcome of this case.

The record clearly shows that Bowman employees took over the clerks' function to count the parts, maintain an inventory of the parts by observation, and the task of ordering more parts. Bowman employees now come on the property to observe the supply of small materials. While it was a haphazard inventory system, the periodic observation of the amount of parts on hand was a method of keeping inventory. More importantly, for billing purposes, the outside supplier now maintains a count of parts. Perhaps Bowman employees keep count via computer, but they still must physically observe the amount of a particular part remaining in the bin. Prior to May 3, 1989, clerical employees could verify suppliers' invoices. Thereafter, while clerks process Bowman invoices, they can no longer confirm the accuracy of the invoices since work consisting of the counting of parts and the inventory of parts was transferred to Bowman. Furthermore, because it keeps the inventory, Bowman now implicitly orders the parts. As the Carrier points out, the new system is more efficient but while the Carrier may eliminate scope covered work to achieve savings, it may not transfer work subject to Rule 1 merely because the transferee can perform the work more efficiently or for a lower cost. Instead, the Carrier must procure the Organization's consent to contract out the disputed work.

Most notably, Public Law Board No. 4956, Award No. 3 (Vaughn) recently adjudicated a case with almost identical facts between this Organization and the Grand Trunk Western Railroad Company. Indeed, the issue was whether an outside contractor, Bowman, had intruded into work reserved to storehouse employees under a similar

scope rule when it delivered parts directly to a heavy repair shop.

The Board wrote:

The record indicates that the work at issue is the work of inventorying and stocking nuts and bolts, pipe and electrical fittings for the Shop. That work had previously been performed by Stores employees in the Materials Department in the clerical craft; and the parts had been kept in and distributed from bins in the storeroom maintained by them. The Board is persuaded that, as a result of the "positions and work" Scope clause of the Agreement, the work in question belonged to covered employees and could not be removed without the Organization's consent. Mere change in the location of the work or assignment thereof to a different department thereafter is insufficient to remove the work from the coverage of the Agreement.

After Public Law Board No. 4596 issued Award No. 3, the Carrier herein tried to characterize its arrangement with Bowman as a direct purchase contract. However, Award No. 3 also rejected the identical defense raised by the Grand Trunk Western. This Board cannot find any discernable distinction between the Bowman-Grand Trunk Western arrangement and the Bowman-Carrier arrangement. For the reasons more fully set forth in Public Law Board No. 4596, Award No. 3, the Carrier violated the scope rule.

The Organization bears the burden of not only showing a violation of the contract but also proving all aspects of the claim including the proper remedy. The requested remedy is excessive. Several of the Claimants are each seeking eight hours pay for the same day. For example, four Claimants are seeking eight hours of overtime pay for May 3, 1989. In this case, the Organization never refuted the Carrier's assertion that Bowman employees spent no more than sixty minutes on the property and were often present for less than thirty minutes. Indeed, from the description of the work given by both parties, the Board can infer that the work in dispute —

could not consume more than two hours per week. Since all of the claim dates fall between May 3, 1989 and October 2, 1989, we will sustain this claim for two hours at the straight time rate for each week during the period with the aggregate amount to be divided equally among all Claimants.

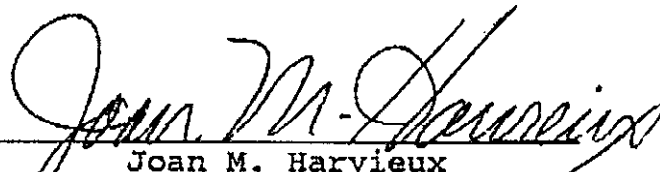
AWARD AND ORDER

Claim sustained to the extent consistent with our Opinion. The Carrier shall pay Claimants an aggregate amount of two hours per week at the straight time rate for the period from May 3, 1989 through October 2, 1989 with the aggregate amount to be divided equally among all Claimants. The Carrier shall comply with this Award within thirty days of the date stated below.

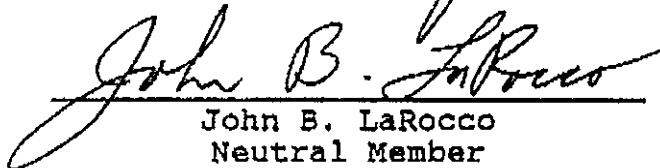
Dated: August 10, 1992



William R. Miller
Employees' Member



Joan M. Harvieux
Carrier Member


John B. LaRocco
Neutral Member