

PUBLIC LAW BOARD NO. 6290

**Case No. 45
Award No. 45**

PARTIES TO DISPUTE: (Transportation Communications International Union
(CSX Transportation, Inc.
(Former Chesapeake and Ohio Railroad)

STATEMENT OF CLAIM:-

Claim of the System Committee of the Brotherhood that:

Carrier File 6 (00-1427) TCU File CO/00-1503

- (a) The Carrier violated the terms of the Clerks' General Agreement No. 10, particularly Scope Rule 1, 23 and other Rules, when it allowed and/or permitted Contract Supervisor (Jerry Myers), a "Stranger" to the Clerical Agreement, to requisition various car parts and other items for the Locomotive Departments at S. Charleston and Hinton, WV, and requisition items for the Mechanical Dept., utilizing the Oracle System. This work had been assigned to the Claimant by Supervisor Layne's May 30, 2000, letter and for Carrier now to assign these duties to a "Stranger" to our agreement is a serious Scope violation.
- (b) The Carrier shall now allow Claimant P. A. Skinner straight time hours for the days outlined in original claim, in addition to any other earnings.

Carrier File 6 (00-1429) TCU File CO/00-1429

- (a) The Carrier violated the terms of the Clerks' General Agreement No. 10, particularly Scope Rule 1, 23 and other Rules, when it allowed and/or permitted Contract Supervisor (Jerry Myers), a "Stranger" to the Clerical Agreement, to requisition various car parts and other items for the Locomotive Departments at S. Charleston and Hinton, WV, and requisition items for the Mechanical Dept., utilizing the Oracle System. This work had been assigned by letter of May 30, 2000, to the Claimant's position, for Carrier now to assign these duties to a "Stranger" to our agreement

is a serious Scope violation.

- (b) The Carrier shall now allow Claimant P. A. Skinner straight time hours for the days outlined in original claim, in addition to any other earnings.

Carrier File 6 (00-1483) TCU File CO/00-1483

- (a) The Carrier violated the terms of the Clerks' General Agreement No. 10, particularly Scope Rule 1, 23 and other Rules, when it allowed and/or permitted Contract Supervisor (Jerry Myers), a "Stranger" to the Clerical Agreement, to requisition various car parts and other items for the Locomotive Departments at S. Charleston and Hinton, WV, and requisition items for the Mechanical Dept., utilizing the Oracle System. This work had been assigned by letter of May 30, 2000, to Claimant's position, for Carrier now to assign these duties to a "Stranger" to our agreement is a Scope violation.
- (b) The Carrier shall now allow Claimant P. A. Skinner straight time hours for the days outlined in original claim, in addition to any other earnings.

Carrier File 6 (01-0138) TCU File CO/01-0138

- (a) The Carrier violated the terms of the Clerks' General Agreement No. 10, particularly Scope Rule 1, 23 and other Rules, when it allowed and/or permitted Contract Supervisor (Jerry Myers), a "Stranger" to the Clerical Agreement, to requisition various car parts and other items for the Locomotive Departments at S. Charleston and Hinton, WV, and requisition items for the Mechanical Dept., utilizing the Oracle System. This work had been assigned by letter of May 30, 2000, to Claimant's position, for Carrier now to assign these duties to a "Stranger" to our agreement is a Scope violation.
- (b) The Carrier shall now allow Claimant P. A. Skinner straight time hours for the days & hours outlined in original claim submitted by

District Chairman C. R. Wilmer, in addition to any other earnings.

Carrier File 6 (01-0361) TCU File CO/01-0361

- (a) The Carrier violated the terms of the Clerks' General Agreement No. 10, particularly Scope Rule 1, 23 and other Rules, when it allowed and/or permitted Contract Supervisor (Jerry Myers), a "Stranger" to the Clerical Agreement, to requisition various car parts and other items for the Locomotive Departments at S. Charleston and Hinton, WV, and requisition items for the Mechanical Dept., utilizing the Oracle System. This work had been assigned by letter of May 30, 2000, to Claimant's position, for Carrier now to assign these duties to a "Stranger" to our agreement is a violation of our Scope Rule.
- (b) The Carrier shall now allow Claimant P. A. Skinner and all subsequent incumbents, one-hundred thirty-three (133) hours at the straight time rate of her position 4G09-140 (150.94 per day-\$ 18.87 per hour), per list contained in claim, which equals \$2,509.71 for the month of October. In addition, beginning November 1, 2000, and continue each and every work day thereafter until the violation ceases, Carrier shall compensate Claimant and all subsequent incumbents, one hundred thirty-three (133) hours a monthly average- \$2,509.71/daily average of twenty-two (22) days - \$114.08 per day - \$2,509.71, as stated in original claim attached.

This appeal is being presented in accordance with Rule 27 ½ and should be paid.

FINDINGS:

This Board, after hearing upon the whole record and all the evidence finds that the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

Several issues surround the pivotal question of whether the Scope of the

Agreement was violated. The Organization alleges that the Carrier abolished a Clerical Position in the Mechanical Department at South Charleston, West Virginia, and transferred the duties to the Chief Clerks' position occupied by Claimant Skinner. Specific thereto was the responsibility for ordering and receipting material. Given that the Scope Rule is a Position and Work Scope Rule, the work performed can't be removed from the employees and assigned to those foreign to the Agreement. The Organization maintains that Contract Supervisor Myers thereafter began to order and receipt materials in violation of the Agreement. The Organization argues that this work had not been previously shared.

The Carrier denies that the duties of Ordering and Receipting Material was assigned to the position of Chief Clerk to the exclusion of others. In fact, the Carrier argues that while the duties were added to the Chief Clerks' position, the work was shared by other crafts, non-contract employees and was by practice performed at the location in dispute by Contract Supervisor Myers.

On procedure, the final letters by the Organization dated November 27, 2001 and by the Carrier dated December 18, 2001 have been considered and are a part of the on-property record. On the merits, two pivotal letters were presented in evidence by the Organization and written by Regional Director Layne. Both were similar. The first was written to Chief Yard Clerk Skinner, dated May 30, 2000. The second letter was written to Local Chairman Wilmer, dated September 15, 2000, in answer to a request for information on how the duties of the abolished clerical position were distributed. That letter states in part:

The only duties transferred from AAR Clerk.. were as follows..:

Ordering/Receiving of Material for South Charleston
Mechanical department.

The remainder of duties for the AAR clerk; ..are not assigned
exclusively to the clerks at Charleston.

The Organization has provided additional probative evidence in statements from Clerks Skinner and Kirk, Laborers Shockley and McCartney, Car Foreman Browning and Extra Foreman D. Skinner.

The Board takes serious note that the statements from former AAR Clerks at this

location dispute Contract Supervisor Myers. Ms. Skinner states that:

While I was assigned to the AAR Clerk Position at So. Charleston, WV, I always ordered and received all of the material for the car department. This duty was not shared with the contract supervisor as Mr. Myers stated in his letter.

And equally supportive, former AAR Clerk Kirk states that ordering and receiving of material "was never a duty that was shared with supervisor Myers." Laborers Shockley and McCartney both indicate that this input of items changed after August 2000, with the Car Foreman Myers inputting the inventories, rather than the AAR Clerk. Additionally, the two Foreman who wrote statements indicated that they did not share this work and further, Mr. Skinner indicated that the Clerk was given the list of materials needed and did all receiving of material as he "did not share their duties with them."

The Organization argues that even if other crafts or individuals had performed this work prior to the abolishment of the AAR Position, which the Organization denies, it was certainly the work of the Chief Clerks' position after the letter of May 30, 2000 and confirmed supra. The above letter and statements present a *prima facie* case that the work herein disputed was exclusive to the employees and therefore Scope protected.

The Board notes that in each of these claims the Carrier denied that this work became the exclusive right of the Chief Clerks' position after May 30, 2000. The Carrier further argues that the disputed work had always been shared prior to this date. Regional Director Layne denied the claims stating not only that the ordering and receipting of material was "not assigned exclusively to the clerks" but that "Supervisor Myers input a majority of the requisition orders of material and receipted for some." The Carrier refuted each of the above statements and further, provided an audit trail of requisitioned parts.

We have carefully reviewed the admissibility and value of each statement and evidence to the on-property handling of claims. The Board is persuaded that the Organization has failed to sustain its burden of proof for the following reasons. The initial letter of September from Regional Director Layne was followed by a direct denial of its alleged meaning. The stranger to the Agreement in these claims was Contract Supervisor Myers. The Carrier stated that: "this work is shared, not on selected dates, but continuously, and has been for years prior to the abolishment of the AAR Clerk.

position." It presented a statement from Car Foreman Myers that, while far from explicit to the issue of ordering and receiving of material, stated:

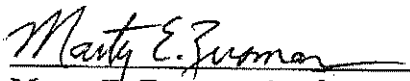
I have been a Foreman since (sic) 1980 and while working as the Car Foreman I have always performed duties that the AAR Clark (sic) did when the job was blanked or if the work load was too great then I would assist in getting the work caught up. Some jobs were shared I would do sometimes and other times the Clark (sic) would do.

The Carrier further rebutted the Organization's position that this work was either exclusive prior to the May 30, 2000 letter, or became assigned thereafter. It provided an audit of parts. There is substantial proof provided in the audit that Supervisor Myers had performed this duty prior to the abolishment.

Accordingly, with clear evidence that both Clerk Skinner and Contract Supervisor Myers did order parts prior to the letter of May 30, 2000, we must find that the Organization has failed in its burden of proof. The letter by Regional Director Layne which initially suggested exclusivity was clearly retracted by Regional Director Layne as to its meaning. Finding in the evidence that the work was previously shared and that the letter does not prove future exclusivity, the Board finds that the Scope Rule has not been violated. As such, the claim must fail.

AWARD:

The Claims must be denied.


Marty E. Zusman, Chairman
Neutral Member


C. H. Brockett
Organization Member


J. T. Klimtzak
Carrier Member

Date: 11/12/02