

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(CSX Transportation, Inc. (Seaboard System Railroad)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10474) that:

1. Carrier violated the Agreement specifically Rule 1, when on August 22, 1988, it allowed and/or permitted non-contract employees to input their own Efficiency Reports.

2. As a result of this violation, Carrier shall compensate the Senior Available Clerk one (1) day's pay at the rate of pay of Position No. 154, location 4C01, and a continuous claim thereafter until resolved by General Chairman and Labor Relations."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

At the outset, the Board notes that the Carrier has advanced procedural arguments which were not presented on the property and, therefore, will not be considered in our deliberations.

This is a Scope Rule claim in which the relevant facts are not in dispute. The work in question concerns the Carrier's Efficiency Test System, which basically consists of a process whereby officials observe employees to ascertain if these employees are complying with the Operating and Safety Rules. It is a function mandated by the Federal Railroad Administration and is a part of the duties of the Carrier's operating officers. These officers fill out forms that are mailed to a central location on each of the Carrier's Divisions. At the Division offices, certain of the information contained on the forms is inputted into the Carrier's computer system by contract Clerks.

The claim at issue here arose because the Carrier's officers input their handwritten records into the computer system by the use of a cathode ray terminal ("CRT"). This is the work claimed by the Organization because the Clerks were no longer involved in that part of the process.


The Carrier, by detailed letter dated October 19, 1989, denied the Organization's claim. The substance of the Carrier's denial was never refuted on the property. Numerous Awards have held that when material statements are made by one party and not denied by the other party, the statements stand as un rebutted and are accepted as established fact. This basic principle is particularly applicable when there is both time and opportunity to deny an allegation or similar contention.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1992.