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NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

JAN - 5 1995

G. L. HART

Award No. 30643
Docket No. CL-30275
94-3-92-3-197

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

(Transportation-Communications
(International Union
PARTIES TO DISPUTE: (
(Elgin, Joliet & Eastern Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Union (GL-10785) that:

(1) Carrier violated the effective agreement when on January 30, 1991, it required and/or permitted an employee not covered thereby to perform work reserved to fully covered employees.

(2) Carrier shall now compensate the senior off-duty clerical employee eight (8) hours' pay at the time and one-half rate of Assistant Chief Yard Clerk for January 30, 1991."

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 waived right of appearance at hearing thereon.

On the Claim date, the Organization alleges that Carrier's Trainmaster, while on the property of chemical industry customers located away from Carrier's Joliet facilities, made track checks and prepared a switch list for the engine crews under his supervision. The Organization asserts that the disputed work is reserved to employees covered by its Agreement and that its performance by the Trainmaster violated Rule 1 - the Scope Rule.

Carrier does not deny that its Trainmaster made the switch list, but it asserts that clerical employees have never performed such work on customer property and that the work is not reserved to the employees by either tradition or practice. Rather, Carrier asserts that such work is usually performed by the customer's employees. In the Trainmaster's role of liaison between the customers and the Carrier, Carrier asserts the Trainmaster did the work for the benefit of the customers. The Organization did not challenge the Carrier's assertion that the disputed work is usually performed by customer employees. Carrier also aggressively asserted that the Organization has provided no evidence that the work was ever performed by a covered employee.

The parties have a "Positions & Work" Scope Rule. When disputes arise over scope coverage under such a Rule, it is necessary that the Organization prove actual past performance of the disputed work to establish its claim. Mere assertions of ownership of the work are not sufficient to support a claim in the face of challenges to those assertions.

Careful review of the on-property record fails to reveal any probative evidence that covered employees have ever performed the work in dispute. The Organization had the burden of proof to provide such evidence, but it has failed to satisfy that burden. The Claim, therefore, must be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 28th day of December 1994.