

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34035
Docket No. CL-34591
00-3-98-3-165**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Burlington Northern Santa Fe Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11961) that:

1. Carrier violated the Schedule Agreement dated December 1, 1980, when, beginning January 3, 1995, and continuing until the violations cease, it employed a stranger to the Agreement to perform Scope-covered work.
2. Carrier shall now be required to compensate the senior available GREB or Extra List employee or two (2) hours' compensation at the rate of the Administration Clerk Position (\$119.97 per day) beginning January 3, 1995 and continuing on each and every work day thereafter until said violation ceases and the work is returned to the craft and class of employees represented by the Transportation Communications Union.

If GREB or Extra List employees are unavailable, claim is for proper respondents pursuant to Rule 37 and 38 of the Agreement.

The amount claimed in is additional to all other earnings claimant's may have received on the claimed dates and is subject to future wage increases.

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 were given due notice of hearing thereon.

On April 22, 1994, and pursuant to a posting of April 7, 1994, K. Gruel was awarded an Administration Clerk's position at Fargo, North Dakota. The bulletin described the major assigned duties of the position as follows:

"Assist Director Employee Relations with all functions involved in the employment process. Responsibilities to include, but not limited to preparing and completing background checks, preparation of testing material, organizing physicals, preparing various forms for payroll, personnel records and government. Maintain office files, maintain computer tracking files, handle incoming and outgoing mail. Position will also assist Director Safety, Manager Rules, and Rehab Manager in maintaining files, generating computer records, mail duties, and clerical support as required. Must know Xerox workstation applications and familiar with Main Frame applications. Typing requirement 40 WPM."

On August 2, 1994, the Carrier posted 13 exempt positions for Human Resource Analysts for various locations throughout its system. The primary responsibilities for these positions focused on recruiting, interviewing and hiring qualified applicants and involved substantial travel. The described duties of the Human Resource Analyst position were as follows:

"Coordinate with HR Field Rep. in all phases of sourcing and hiring for field positions. Specific responsibilities include contacting recruiting sources in various locations, communicating requirements, and arranging visits via telephone. Individual will also be responsible for following BN procedures for hiring, such as initiating and evaluating background investigations, coordinating and arranging pre-employment physicals and drug screens with physicians offices and applicants. Responsible for

contact and follow up with multiple candidates/applicants (sometimes 200+) at a given time. Participate in new hire orientation, monitoring and administering testing sessions, and the interview process. Analyze division staffing requirements. Participate in developing corresponding forecasts and staffing recommendations. Administer and develop Division employee Relations programs such as: PEP, Tuition Refund, AAP/EEO, Multiple Injury Review Process (MIRP), Positive Improvement Program, (PIP), Chairman's Circle, Presidential Award, and Sexual Harassment Prevention. Coordinate and participate in training efforts, succession planning, promotion placement and assessment techniques. Preliminary work up for internal complaint resolutions. Responsible for addressing inquiries from employees in absence of HR Rep. Will interface with outside customers on a frequent basis. Responsible for Ad Hoc reporting."

B. Grieger was hired for the Human Resource Analyst position at Fargo and assumed her duties on December 1, 1994. On December 20, 1994 — less than three weeks after Grieger assumed her non-covered position — Administrative Clerk Gruel was advised that her position would be abolished effective close of shift December 30, 1994. This claim followed.

The Scope Rule, Rule 1(A) provides that "Work now covered by the scope of this Agreement shall not be removed except by agreement between the parties." We find the Organization has carried its burden to demonstrate a violation of that Rule.

First, while the extent may not be clear from the record before us, the newly created Human Resource Analyst position at Fargo had duties that were formerly performed by the abolished Administration Clerk. For example, the Administration Clerk engaged in the "... preparing and completing background checks, preparation of testing material, organizing physicals. . . ." The newly created Human Resource Analyst position at Fargo has the function of "initiating and evaluating background investigations, coordinating and arranging pre-employment physicals and drug screens . . . [p]articipate in new hire orientation, monitoring and administering testing sessions."

Second, the Human Resource Analyst kept a log of her duties. A number of the functions she performed on various dates appear to be the kinds of duties performed by the former Administration Clerk. For example, the Human Resource Analyst "[p]acked

test materials for Machinist and Trackman new hire sessions . . . gather new hire paperwork . . . set up for new hire orientation and testing. . .” Those are the kinds of duties found in the Administration Clerk’s posting.

Third, the timing is most suspicious. The incumbent of the Administration Clerk’s position was notified of the abolishment of that position on December 20, 1994 — not even three weeks after the Human Resource Analyst began working at Fargo.

Fourth, during the handling of the claim, a Carrier representative stated to the Organization that “what happened to the clerk was not right. . . .” That statement attributed to the Carrier was not refuted.

Fifth, given the above factors, one is compelled to ask a simple question. Where did the Administration Clerk’s work go? This is not a case as the Board has so often seen under this type of Scope Rule where the Scope covered work is dispersed to other covered employees at a specific location or elsewhere in a Carrier’s system. Nor is this a case where the installation of a new technologically advanced system eliminated Scope covered functions. While the Carrier argued that there were such advances, there is no evidence at the time the Human Resource Analyst took over that the Carrier implemented new automated systems that made the support type functions of the Administration Clerk redundant or obsolete. This is a case where enough work existed to justify having a covered position and the only intervening event was that the Carrier brought in a non-covered employee with broader, but nevertheless, overlapping job functions and almost simultaneously the covered Administration Clerk’s position was abolished. It seems that if there were more activities going on which prompted the Carrier to bring on 13 new Human Resource Analysts — one who worked at Fargo — the Administrative type Human Resource functions would not disappear, but would increase. Looking at this dispute in its entirety, there just was no intervening event aside from the hiring of the non-covered Human Resource Analyst that could explain the Carrier’s elimination of the Administration Clerk’s duties.

On balance, we are persuaded that the Organization satisfied its burden and demonstrated that at least part of the Administration Clerk’s work was taken from that position and assigned to a non-covered position. In making this finding we do not intimate that the Administration Clerk performed the same duties as the exempt Human Resource Analyst. The Human Resource Analyst is obviously a highly trained and specialized position. But we are satisfied that a number of the Administration Clerk’s

supportive duties have been absorbed by the newly hired non-covered Human Resource Analyst which, without the Organization's consent, violated the Scope Rule.

In terms of a remedy, we cannot ascertain the precise extent of the work taken from the Administration Clerk. We shall therefore require the parties to engage in a joint check of the Carrier's records to ascertain that amount. Make whole relief for those lost work opportunities shall be required.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of May, 2000.