

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36392
Docket No. CL-36317
03-3-00-3-641

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen when award was rendered.

(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation (Conrail)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12655) that:

Claim of the System Committee of the TCU (CNOO-0328) on behalf of Claimant J. M. Kirschner, employee #994108 that:

(a) The Carrier violated the Clerks’ Rules Agreement effective July 1, 1979, Particularly Rules 1, 24, 40 and other rules when it abolished effective July 15, 1999, position #09-009-2194-0064-7, Secretary in the Information Systems Department NS Transition Team, last incumbent J. M. Kirschner and assigned duties from this position to non-agreement employees Carole Knowlton, Linda Mortimer and other non-agreement employees. Specifically the duties as outlined in the following:

- 1) Attached Exhibit “A” bulletined job description for position #09-009-2194-0064-7.
- 2) Attached Exhibit “B” letter from J. M. Kirschner that she prepared on July 14, 1999, outlining additional duties not shown on her bulletin job description that were assigned to her position and she performed prior to the abolishment of her position. Joan also outlined a chronological brief history of the redistribution of payroll/time keeping and other agreement duties in the Information Systems Department since January 1998.

- 3) Attached Exhibit "C" printed list of employees printed on July 8, 1999, that Joan Kirschner was performing all WFIS payroll/ time-keeping and related functions for since at least January 6, 1998, when she was assigned to do so for the NS Transition Team. Prior to January 6, 1998, she performed WFIS time-keeping functions for many of these employees and for some employees that other secretaries were assigned to perform the WFIS timekeeping functions for on January 1, 1998.
 - 4) Copy of E-Mail date July 9, 1999, (Exhibit D) from non-agreement employee Carole Knowlton to agreement employees Joan Kirschner and P. A. Toole instructing them that she (Carole Knowlton) will be taking over the payroll after they leave Conrail and to either notify all employees they do payroll for about this change or fax a copy of their payroll sheet to her.
- (b) Claimant J. M. Kirschner should now be allowed eight (8) hours pay at the pro-rata rate of position #09-009-2194-0064-7, which is WGC #7 or her EMR, whichever is higher commencing July 15, 1999, and continuing for each and every day thereafter (Including time employee is off work on furlough status) until this violation is corrected and this work is returned to agreement employees.
- ©) In order to terminate this claim, said clerical agreement work must be returned to employees covered by the Clerks Agreement.
- (d) This claim has been presented in accordance with Rule 45 and should be allowed."

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.

Pursuant to the November 2, 1998 Implementing Agreement, in December 1998 the Carrier ran a "rundown" for employees of Seniority District 26 to select positions in anticipation of the Conrail, NS, CSX merger. Because Claimant Kirschner elected not to select a position she was placed on the Supplemental Extra Board and assigned to Position 09-009-2194-0064-7 for payroll purposes. Following the split date of June 1, 1999, the Claimant was furloughed on July 14, 1999 with no seniority rights. The instant claim was filed on August 4, 1999, alleging that the payroll work the Claimant had performed between January and June 1999 was now being performed by non-Agreement individuals.

The Carrier initially denied the claim by letter of September 16, 1999, reading in pertinent part as follows:

"Your claim is denied for the following reasons:

- 1. The duties assigned to position #09-009-2194-0064-7, Secretary in I/S Department are no longer performed as Bob Shreyer's group has been disbanded and non longer exists. Mr. Shreyer left the Company last year and Ms. Kirschner was reassigned to my group to assist in the transition.**
- 2. You only document timekeeping duties which in their present form are not the same as those performed by Claimant on her former position, and have traditionally been shared work. The new NS payroll system is based on exception reporting requiring action only if an employee does not work. To accomplish this task requires approximately fifteen (15) minutes each day. Prior to the NS payroll system, timekeeping required four (4) hours on Monday**

and only one (1) hour per day for Tuesday through Friday for input. There is no basis for your claim for eight hours pay.

3. This claim is one of several that you have submitted on behalf of a number of furloughed employees and represents an improper duplication or pyramiding of claims with no connection to the work performed (if any) or the compensation claimed.”

Careful examination of the record in this case reveals that the Organization never refuted the facts set forth in the Carrier’s denial letter, supra. As the moving party in this contract interpretation case, the Organization failed to carry its burden of making out a prima facie case of violation.

AWARD

Claim dismissed.

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 18th day of February 2003.