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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35768
Docket No. CL-35743
01-3-99-3-727

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(Delaware and Hudson Railway Company, Inc.)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12475) that:

- (1) I (Valerie A. S. Tyler) am requesting a full day's pay for work being performed by Yardmaster B. Federico on July 21, 1998 at 1135 hours that was in violation of the Clerks' Scope of duties, while a clerk was on duty.
- (2) Work done by B. Federico, DSPO of cars normally to be done by clerks.”

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.

As Third Party in Interest, the United Transportation Union was advised of the pendency of this dispute, but chose not to file a Submission with the Board.

On date of claim, a Yardmaster found it necessary to "dispo" a car because he apparently was unable to contact the Minneapolis office where such work is performed by a clerical employee. The Organization contends the work performed by the Yardmaster is reserved to the clerical craft, and should have been performed by the Claimant, rather than an employee not covered by the Agreement.

The Carrier first asserts the work was merely incidental to the Yardmaster's duties. We do not agree with this position. The Carrier acknowledges that this work belongs to clerical employees in the CATS department in Minneapolis. It explains, "It is only on the odd occasion when the EDI system does not perform this function properly, and the Yardmaster subsequently cannot reach Minneapolis to perform this function in order to timely switch a track, that the Yardmaster will dispo the odd car." The Carrier insists these are isolated instances. Based upon such an assertion, the Board concludes this is work that is not normally performed by the Yardmaster, and is not incidental to his other duties. It is evident the only reason the Yardmaster performed the work was because he could not reach the proper employee and wanted to expedite the movement.

Next, the Carrier argues the Claimant would not have performed this work inasmuch as she works at Binghamton, and the work would have been performed by Minneapolis Clerks. The Organization, however, insists Binghamton employees perform this work as backup to the employees at Minneapolis. The Carrier does not refute this assertion.

Based upon the record before it, the Board concludes the Agreement was violated when someone other than an employee covered by the Agreement performed the work in question. The magnitude of the violation, however, does not warrant the remedy sought. Accordingly, the Carrier is directed to compensate the Claimant one hour's pay. In doing so, the Board rejects the Carrier's argument that any violation of the Agreement was merely de minimis, and not worthy of a remedy. If this were a one-time event, the Board might agree that the small amount of work performed by the Yardmaster was not enough to have an effect on the bargaining unit. The record shows, however, that there has been a pattern of such violations whenever the Clerks at Minneapolis cannot be reached. Such a pattern could have the long-term effect of eroding the work out of the bargaining unit. A remedy, therefore, is not inappropriate.

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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 24th day of October, 2001.