

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: ( (Transportation Communications International Union  
(Alton and Southern Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-10264) that:

1. Carrier violated the Agreement when, on the dates of April 18 and 19, 1987, it required employes not covered by the TCU Agreement to footboard crews between points on the Alton and Southern Railway.

2. Carrier's action violated the Agreement, expressly, Rule 1 and associated Rules contained therein.

3. Carrier shall now be required to compensate Mr. Ronald Leezy for eight (8) hours at the straight time rate of \$12.6586 per hour for each date, April 18 and 19, 1987 and; Mr. Donald Case and Mr. Ken Fulton eight (8) hours each at the straight time rate of \$12.6586 per hour for the date of April 19, 1987."

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.

As Third Party in Interest, the International Brotherhood of Firemen and Oilers was advised of the pendency of this dispute, but chose not to intervene.

The basic facts of this case are set forth as follow: On April 18 and 19, 1987, Carrier used non-Agreement employees to transport Hostlers and Hostler Herders on Carrier's property. It was the Organization's position that said actions violated the controlling Agreement specifically Rule 1 (Scope Rule), which in part precludes the removal of work from the Agreement. Essentially, the Organization argued that consistent with said Rule and the decision in Third Division Award 17934, the work of transporting or footboarding crews belonged to the clerical craft. As further support for its position, the Organization noted that Carrier considered Hostlers and Hostler Herders as integral components of crews as evidenced by Carrier's March 2, 1987, letter to the United Transportation Union's General Chairman. In part, said letter read,

"this in reference to our conference concerning the establishment of crews consisting of an Inside/Outside Hostler and Herder/Switchman position."

In rebuttal, Carrier asserted that said work did not accrue exclusively to the Clerks and further that said work was new on the property. It observed that with the exception of the period March 6, 1980, to May 9, 1980, and then beginning on March 5, 1987, there were no Hostler Herders on the property and no Hostlers or Hostler Herders positions between May 21, 1970, and March 6, 1980. Accordingly, since said positions were not in existence at the time Third Division Award 17934 was issued (Award dated May 21, 1970) and since for the brief period said positions, in fact, existed, they were transported by Roundhouse Foremen and Roundhouse Laborers. Further, Carrier pointed out that since Hostlers and Hostler/Herders began and ended their tour of duty at the Roundhouse and needed to be transported through their entire shift, the work involved was distinguishable from delivering a train crew at the beginning of a shift and then returning the same crew at the shift's end.

In considering this dispute we concur with the Organization's position. We recognize, of course, that said positions were in existence for a short period of time, but Carrier considered such positions within the generic category of crews. Since under the authority of Third Division Award 17934, Clerks were responsible for footboarding crews, if a Clerk was available to perform such work and since we find no distinction among types of crews, we must, of necessity sustain the Organization's petition.

On the other hand, we find the compensatory remedy proposed by the Organization excessive and unsubstantiated by the record and thus we will award each Claimant two (2) hours straight time pay for each day of the cited violation.

A W A R D

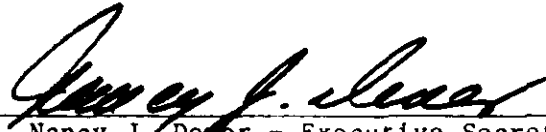
Claim sustained in accordance with the Findings.

Form 1  
Page 3

Award No. 28355  
Docket No. CL-28416  
90-3-88-3-201

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 27th day of April 1990.