

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(CSX Transportation, Inc. (former Seaboard Coast Line
(Railroad Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10564) that:

1. Carrier violated the Agreement on/or about January 1, 1988, when they contracted with Airport Messengers Service to handle documents for validation on the basis of three times weekly between the Hulsey Intermodal Facility and U.S. Customs Office at the International Airport, Atlanta, Georgia. This work was assigned to and performed by the Messenger/Utility Clerk formerly held by Mr. J. D. Duke and could not be removed from the coverage of the Scope Rule without as expressly agreed upon between the General Chairman and Personnel and Labor Relations Departments.

2. As a result of the above violation, Carrier shall be required to compensate the Senior Idle and Available Employee eight (8) hours' pay at the rate of Porter Drivers (incumbents on Positions 107, 120, 208, 210, 310 and 315). Should there not be an available employee who could have performed this messenger service that Carrier contracted out to Airport Messengers Service at the straight time rate, then this claim would be for eight (8) hours' pay at the overtime rate of the Porter Driver positions shown herein, or their own regular assignment, whichever is higher, for three (3) days per week. Mondays, Wednesdays, and Fridays of each week.

3. This claim is to be continuous commencing on April 25, 1988, for three (3) days each week, Monday, Wednesday and Friday, until this violation is satisfactorily resolved."

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 employees 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.

The Organization contests the alleged transfer of delivering documents from Carrier's Hulsey Intermodal Facility to the United States Customs Office at the Atlanta International Airport from clerical forces to a messenger service.

Initially, the Carrier argues that the claim is procedurally defective inasmuch as the Organization failed to file the claim within 60 days as prescribed by Rule 37. The time limit for submitting a claim starts as of the time it is reasonable to anticipate knowledge by the Organization and there is nothing of record to suggest that the Organization had knowledge prior to the date stated by it.

Carrier's argument concerning unnamed Claimants has not been considered because it was not made on the property.

The Carrier has argued exclusivity in this case, but the Scope Rule in force between these parties is not general in nature and thus, exclusivity need not be established. We feel that the Carrier has conceded that it has eliminated certain work from the clerk craft and that action is precluded by the "Positions or work" Rule.

Finally, we consider the monetary claim. The Organization submitted a claim for eight hours pay for three days per week. The basis for that claim is not explained. In prior Awards we specifically stated that the Board would not entertain speculative claims which were not fully advanced and/or developed on the property. However, on the property, Carrier failed to dispute the specific number of hours involved, stating only that the claim was "excessive." In its Submission it belatedly argues that the Airport Messenger Service averaged two trips per week with each trip requiring at most two hours to perform. Still, no evidence was forthcoming to document such assertion.

Nevertheless, analysis of the record reveals that concurrent with the March 18, 1988 abolishment of Messenger/Utility Position No. 160, with the exception of the disputed duties, all remaining duties were reassigned to Position Nos. 103 and 203, 107-208-310, or 120-210 and 315. We conclude that the claim shall be remanded to the parties for a joint check of Carrier's records to determine the proper Claimant who shall be allowed a call three days per week until the violation ceases.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Zeyer - Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1992.

NATIONAL RAILROAD ADJUSTMENT BOARD

Serial No. 353

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 29401

DOCKET NO. CL-29843

NAME OF ORGANIZATION:

Transportation Communications
International Union

NAME OF CARRIER:

CSX Transportation, Inc.
(former Seaboard Coast Line
Railroad Company)

This matter has been returned to the Board, on the request of the Organization, for an Interpretation. The Board reviewed the written arguments and heard oral presentations of the parties. We find that the Award that was rendered by this Board on September 17, 1992, sustained a claim and it remanded the dispute to the parties for a joint check of Carrier's records to determine the proper Claimant who shall be allowed a call three days per week, until the violation ceases.

In its response to the Organization's request for an Interpretation, CSXT states that it is not a party to the instant dispute. The Carrier advises that it made appropriate payments through January 1992, but that (prior to the issuance of the Award) on February 1, 1992:

"...pursuant to an agreement between TCU, CSXT and CSX/Sea Land Terminals, Inc., the disputed work and other work at the intermodal terminals was transferred from CSXT to CSX/Sea Land Terminals. Contemporaneous with the transfer of the intermodal terminals' work, TCU and CSX/Sea Land Terminals entered into a new collective bargaining agreement. It is the interpretation of that new bargaining agreement which is the focus of TCU's present dispute with CSX/Sea Land Terminals."

We reviewed the Agreement referred to above and note that the Terminal Company and TCU agreed to adopt the provisions of the TCU/CSXT Agreement and all work of the TCU craft or class shall be performed by employees holding seniority rights in and assigned to positions in the office and departments at locations and on the seniority districts as shown in that Agreement.

In short, the new Agreement did not seek to eliminate various clerical duties from coverage in the new Agreement.

In essence, Award 29401 found that the work in question was covered by the Scope of the Agreement and, when the new Agreement transferred the clerical work, without exception, the work which was the subject of the cited Award was transferred as well. See, in this regard, Award 3, Public Law Board No. 5439.

Referee Joseph A. Sickles, who sat with the Division as a neutral member when Award 29401 was adopted, also participated with the Division in making this Interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 8th day of August 1994.