

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award No. 29597

Docket No. CL-30089

93-3-91-3-519

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

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood, (GL-10623), that:

1. Carrier violated the Agreement when, on June 26, 1990, Yard Conductor R. R. Tuten booked Track S27 at Savannah Yard. This is clerical work covered by the revised Scope Rule and Mr. McGinn was available.
2. Carrier shall, because of the violation cited above, compensate Mr. T. J. McGinn for eight (8) hours at the appropriate rate for a position on the Guaranteed Extra Board on June 26, 1990."

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 employe 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 Statement of Claim adequately describes the event which triggered the dispute. The gravamen of the dispute is whether the conduct of the offending Yard Conductor constituted "booking" the track in question. There is no dispute that booking cars in the yard, which comprises a physical check of cars together with noting

their type and car number, is clerical work reserved to the Organization's members.

The Organization argues that the Conductor's action constituted booking the track. It offered an employee statement and made several assertions in support of its allegation. Among the assertions is a reference to the effect that the offending Conductor had performed booking work on other occasions and that the Yardmaster had reason to know of the Conductor's actions. The employee statement attributes to the offending Conductor the statement that he "...already had booked it & switched."

Carrier defends asserting that the Conductor merely worked from an existing inbound list, something he is permitted to do, and did not book the track. In addition, Carrier says it had no knowledge of the offending Conductor's actions, nor did it direct or require him to prepare the list. Finally, Carrier contends the Claim, which seeks eight hours pay for the task in dispute, is excessive.

On the record before us, we find that the Conductor's activities did constitute booking the track. In support of this conclusion, we note the employee's statement, the handwritten list produced by the Conductor, the Organization's assertion that the Conductor did not have an inbound list available to him, and the lack of a copy of the disputed inbound list in the record, despite the Carrier's assertion the Conductor worked from one.

Carrier asserts it had no knowledge of and did not direct or require the Conductor's actions. It cites several Awards of this and other Divisions which have not found Agreement violations in such circumstances. While we agree with the general thrust of those Awards, we find them to be inapposite here. Generally speaking, the cited Awards deal with isolated incidents where the Carrier had no reason to know of or expect the disputed employee activity. On the record before us, it appears that the Conductor's action was not an isolated incident and the Yardmaster, an agent of the Carrier, had reason to know of the Conductor's tendencies.

In view of the foregoing analysis, we find the Agreement was violated and the Claim must be sustained. However, the record does not establish the time which was or should have been consumed by the disputed work. The Board is not persuaded that eight hours of pay is justified. Accordingly, the compensation awarded shall be a four hour call at the appropriate rate.

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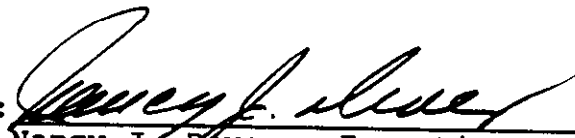
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A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1993.