

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award No. 30041

Docket No. CL-29804

94-3-91-3-220

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International
(Union
(
(CSX Transportation, Inc. (former Louisville
(and Nashville Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10572) that:

1. Carrier is in violation of the Clerical Agreement at Cullman, Alabama, on May 15, 1989, by requiring and/or permitting the Conductor of Cullman switcher to make switch list of cars and tonnage to move from Cullman, Alabama.
2. Claimant, Senior Clerk Available, Extra Clerk in preference, shall now be compensated eight (8) hours' pay at the rate of Mobile Agent's Position 143 for May 15, 1989, in addition to any other compensation this Claimant may have already received on this date; returning this work to the clerical employes covered by this Agreement."

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 Organization defines the dispute herein as follows:

On May 15, 1989, the Conductor of the Cullman Switcher prepared a switch list of cars to be moved from Cullman, which is work assigned to the Mobile Agent.

The Organization provides evidence of this through a Form 6503 (Wheel Mileage Report) which, as intended by the form, does provide a list of cars. Beyond this, the form contains the following:

"Now on Tyson lead they are 19 load of Cho. Leaving these 5 cars for SOY side on main. Drag 19 loads and shove main line. Go into mill and get 12 mtys. Dag [sic] main shove & spot 6 on Soy & 6 on Corn side.

Leave 12 load's [sic] over derail. Take 12 mtys to 389."

There can be no doubt that this is a switch list, preparation and/or transmission of which the Organization contends is work regularly performed by an Agent or Mobile Agent, rather than by a Conductor. The Carrier's response is to defend the right of a Conductor to prepare a wheel report (which is included on the cited Form 6503). This, however, is not in contention. For whatever reason, the Carrier does not address the preparation and/or relay of the switch list which was also included on the report, presumably as instruction to the next crew.

The parties disagree here, as in other similar disputes, as to whether the "general" Scope Rule of January 1, 1973 or the "positions or work" Scope Rule of June 1, 1981 is applicable. Since the Carrier did not take a position as to the switch list work, there is no need to differentiate here between the two Scope Rules. Further, absent contrary evidence, recognition must be accorded the Organization's underlying contention as to assignment of switch list preparation to clerical employees.

In sustaining the Claim, the Board finds that the remedy of eight hours' pay is excessive, given the limited time obviously required for the disputed work. The proper payment is for a minimum call as appropriate under the Agreement. The Board also notes that the Organization seeks remedy to the "Senior Clerk Available, Extra Clerk in preference." In this instance, the Board will not find the Claim defective for lack of a named Claimant. However, the parties are directed to make a reasonable effort to agree on the identification of the appropriate Claimant.

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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: Catherine Loughrin
Catherine Loughrin Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of February 1994.