

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30081
Docket No. CL-30075
94-3-91-3-520

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen 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-10624) that:

(TCU File No. SCL-18.183(5); Carrier's File No. (90-0493)

1. Carrier was in error when it failed to allow Mr. R. H. Taylor's time claim as submitted.
2. Carrier shall compensate Mr. R. H. Taylor for eight (8) hours time and one-half the applicable rate for Job #150 for February 19, 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.

This claim alleges that Carrier violated Rule 26, Section 2 (b) of the Agreement when it allowed "other clerical employees" to perform duties normally assigned to Position No. 150 when that position was annulled due to a holiday. Claimant is the regular occupant of Position No. 150 (Switching Clerk) at Savannah, Georgia. Claimant's regular duties include furnishing scale weights to Colonial Oil, Southern Paper Recovery and working up No Bill Intermodal Reports.

On February 19, 1990, the Claimant's position was annulled due to a national holiday, but other clerical employees in his office

worked that day. Due to work performed in his absence, Claimant filed a claim, on his own behalf, alleging:

"Claiming 8 hrs at time & 1/2 acct. job being annulled on holiday and duties being performed by other positions - R. W. Archer (Pos. #173) giving scale weights to Colonial Oil - W. H. Pittman (Pos. 161) giving scale weights to Southern Paper Recovery - W. H. Pittman working up 'No Bill' Intermodal Report."

Carrier denied the claim asserting that:

"On the holiday in question Mr. Taylor's job was not worked. The two employees that you contend did Mr. Taylor's work on that particular day, do, in part, some of the same duties that Mr. Taylor does. They both give out weights and they will both look up no-bills if it is necessary. The work at issue is incidental routine work performed by other clerical positions."

The Organization appealed the claim and submitted statements from the two employees who allegedly performed work of Claimant's position, Clerks R. W. Archer and W. H. Pittman. Mr. Archer stated that:

"Though I deal with customer's requests on a daily basis, I never furnish weights to customers on cars weighed at Savannah unless the position of switching clerk is annulled or otherwise not filled."

For his part, Mr. Pittman stated:

"As a rule when Mr. Taylor is present, I handle no weights except when Interstate Paper requests them."

Further correspondence and a conference held on November 7, 1990 failed to resolve the dispute.

The issue before us is whether on February 19, 1990, Clerks Archer and Pittman performed duties normally assigned to the Claimant on a date when Claimant's position was annulled, as the Organization alleges, or whether Clerks Pittman and Archer simply performed duties incidental to their positions, as the Carrier contends. Handling no-bills is unquestionably regular and routine work of the Claimant's position. After a careful review of the record evidence, we are convinced that those duties are not regularly or routinely performed by Pittman and Archer. To that extent this claim is sustained and the Carrier is directed to compensate the Claimant at the rate of time and one-half for the

portion of the day that those particular duties were performed. However, with regard to the scale weights, the Organization did not shoulder its burden to prove, by a preponderance of record evidence, that those duties are exclusively performed by the occupant of Position No. 150. Therefore, that portion of the claim is denied.

In closing, we are constrained to comment upon the poor state of this record. In that connection, the casual exchange of documents on the property, without a proper paper trail or verification, leaves both Parties open to motions to exclude arguably de novo evidence at the Board level. Further, the Organization not only submitted documents which were not previously exchanged on the property, but many of its documents were illegible. As we have stated in a previous Award, if parties to disputes before this Board expect exhibits and other materials to be properly considered, then such exhibits and materials must be submitted in timely fashion and a legible form. See Third Division Award 25420.

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 15th day of March 1994.