Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30693
Docket No. CL-31131
95-3-93-3-69

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(CSX Transportation, Inc. (former Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood (GL-10921) that:

(a) The Carrier has violated Rule 1 among others of the Clerical Agreement, when it failed and refused to compensate W. Blakely, ID# 482627, regularly assigned to Flint Extra-Board on a daily rate of $116.32, on July 31, and August 1, 1991, and W. Henry, ID# 478580, regularly assigned to Relief Yard Clerk R-1, hours various with Tuesday and Wednesday rest days, for 1 hour pro-rata straight time, based on a rate of $112.79 on July 8, 15 and 22, August 1, 2, 5, 8, 9, 12, 16, 23, and September 5, 16, 1991, and 20 minutes pro-rata straight time for August 2, 5, 8, 9, 16, and September 16, 1991, and for J.S. Sixberry, ID# 478514, regularly assigned to Yard Clerk C-301, hours 12mn-8am, with Thursday and Friday rest days, for 1 hour pro-rata straight time, based on a rate of $118.42 on July 16, 20, August 3, 5, 10, 12, 17, 24, September 4, 7, 9, 15, 17, 1991 and for 20 minutes pro-rata straight time on August 24, 1991.

(b) The facts are Yard Clerk positions at Flint include the duties of transporting crews. Historically, Clerks at Flint have transported crews. The Carrier is allowing a Days Inn Motel cab to transport crews to and from a motel, and also hauling these crews within Yard Limits at Flint. It is unclear to the committee why Mr. Nye is his decline states, "Claims not supported by agreement," when in fact these claimants' duties include transporting of crews."

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.

Most of the pertinent positions and arguments which are presented in this dispute have already been heard and ruled upon by our Board in Third Division Award 24492. Those positions which were not directly addressed by Award 24492 will be individually addressed herein.

The same location, the same negotiated agreement and the same basic work function which were disposed of in Award 24492 are again present here. In this case, however, Carrier advances the novel argument that the crew transporting service which was provided by the motel in question was a "courtesy service" provided by the motel to its patrons and was not a Carrier-contracted use of an "independent taxi company." They argued that Carrier did not request the service and therefore they were somehow exonerated from any possible violation of the negotiated agreement provision which requires that, at this location, transporting of crews is work which accrues to clerical employees. The Carrier in their initial denial of the claims expressed the opinion that the motel facility "is not a taxi service" but "merely provides free transportation to our crews lodged at that facility." This position was repeated and endorsed by the highest appeals officer in his eventual rejection of the claims.

After reviewing the respective arguments and contentions of the parties on this issue, the Board is of the opinion that the references to "independent taxi company" and "courtesy service provided freely by a motel to its patrons" is a distinction without a difference. Clearly the Carrier entered into an arrangement with the motel for use of its facilities by Carrier's train and engine crews. Carrier knew, or should have known, that this courtesy transportation service was part of the total service being provided by the motel. Carrier knew, or should have known, that this courtesy service required the transporting of train and engine crews to the motel from the Carrier's property as well as from the motel to the reporting locations on the Carrier's property.

Clearly, some specific act by a Carrier agent - either a crew member or some other Carrier representative - was required to initiate the act of having the motel courtesy vehicle come to Carrier's property to pick up a crew for delivery to the contract motel. The same type action by a Carrier agent was required to effect the delivery of the crew from the motel to the job site. Carrier did, therefore, in fact, make a contract with an independent party to provide sleeping accommodations for the train and engine crews which included the attendant courtesy transportation to and/or from the rest house facility.

The case file contains a reference to and reproduction of an in-house document dated February 7, 1991, over the signature of "C.W. WORKMAN" which addressed the subject of "TRANSPORTING OF T&E CREWS AT FLINT, MI." In that letter of instruction, a copy of which was given to the Organization's Local Chairman, the author clearly recognized as fact that "By agreement, the clerical forces have exclusive rights to the above" - referring to the transporting of T&E crews at Flint. In that letter of instruction, the author clearly set forth a penalty payment provision to cover situations when no clerk was available to perform the transporting service. NO ONE in this case has identified the authority of the author of this "in-house" communication to make such statements and commitments. Neither has the Carrier challenged or in any way questioned either the authority of the author of this letter or the applicability of the contents of the letter of instruction to situations as described therein. In fact, Carrier has not uttered one word either in favor of or in objection to the applicability of or the presentation and consideration of this document. The Board, therefore, accepts this document as valid and proper and dispositive in this case.

The Board has carefully read the opinions and conclusions as set forth in Award 24492 and finds nothing with which to take exception. Apparently, the "cease and desist" order as set forth in that Award did not have the intended effect. Therefore, as expressed in Award 24492, the economic sanctions properly applicable for a disregard of the provisions of the negotiated agreement are proper in this case. Fortunately for the Board, the parties themselves have identified the sanctions guidelines which are to be applicable in this type of situation at this location. However, upon examination of the individual claims as submitted in this case, we find that several of the claim dates include two separate payment requests for what amounts to the same basic transportation service function. For example, Claimant Henry on August 2, 5, 8, 9, 12, 16 and September 16, 1991, requests two separate payments, namely, 20 minutes for the pick-up of one crew member at the roundhouse and the balance of the crew at the service center plus 1 hour for the trip to the motel. The reverse of this procedure is found in the delivery of the crews from the motel to the service center and roundhouse.

Similarly, Claimant Sixberry does the same in his August 24, 1991 claim.

After consideration of all the factors present in this case, and in support of the opinions expressed in Award 24492, the Board concludes that each of the named Claimants is entitled to payment of 1 hour at the respective pro-rata rate on each of the claim dates set forth in the subject of this dispute. Those claims for 20 additional minutes on certain of the claim dates are denied because, in the Board's opinion, the action described in each of those instances constituted a part of the continuous crew handling service for which the 1 hour payment is applicable.

Carrier is once again reminded, as was done in Award 24492, that the use of clerical employees to transport crews at this particular location is an agreement provision which can only be changed by negotiation between the parties.

AWARD

Claim sustained in accordance with the Findings.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 31st day of January 1995.