

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30768  
Docket No. CL-29369  
95-3-90-3-284

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

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

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10461) that:

- (1) Carrier violated the Agreement when it allowed all air bleeding to be performed by Switchmen at Southover Yard, Savannah, Georgia.
- (2) Carrier shall now compensate the Senior Available Clerk eight (8) hours' pay per day, seven (7) days a week, at the applicable rate of \$89.55 per day. To begin on July 11, 1987 3rd Shift and be on a continuous basis until the violation is stopped and the work returned."

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 employee 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 Carrier maintains two yards at Savannah, Georgia—Savannah Yard (a former SAL facility) and Southover Yard (a former ACL facility). At Savannah Yard, air bleeding was performed exclusively by Switchmen. At Southover Yard, air bleeding was performed jointly by Switchmen and Clerks.

Yard switching performed at Southover Yard was transferred to Savannah Yard where air bleeding was performed by Switchmen. Clerical employees at Southover Yard therefore no longer performed air bleeding work at that yard.

In 1986, switching was returned to Southover Yard. However, air bleeding was assigned exclusively to the Switchmen at Southover Yard. This claim asserts that a portion of that air bleeding work at Southover Yard which came along with the returned switching work should have also been assigned to Clerical employees.

The parties agree with the above general facts. However, they disagree on when Clerical employees at Southover Yard performed air bleeding work. The critical date in this case is May 16, 1981 because on that date the present form of Rule 1(d) came into effect which provided that "Positions or work covered under this Rule 1 shall not be removed from such coverage except by agreement between the General Chairman and the Director of Labor Relations ...." If air bleeding work was not performed by a Clerical employee at Southover Yard on or after May 16, 1981, then the general nature of the Scope Rule which existed prior to that date would require a denial of the claim because "the work of bleeding cars belongs to no particular craft, but may be done by members of any group as incidental to their regular work." (Third Division Award 22210 between the parties quoting Third Division Award 7113.) However, if on or after May 16, 1981 Clerical employees performed air bleeding at Southover Yard, then the claim has merit. Otherwise, work would have been removed from the coverage of the Agreement without the required agreement between the parties and would permit an easy circumvention of the Rule through a transfer of scope covered work to another facility where no covered employees performed the work and then a re-transfer of the work back as non-scope work. As expected, the Carrier argues that "clerks were not performing this function on May 16, 1981" while the Organization argues that "[o]n the date the Scope Rule was amended (5-16-81), clerical employees were assigned one Air Bleeder position at Southover ...."

The threshold question before us, then, is whether the record sufficiently establishes that air bleeding work was performed by Clerical employees at Southover Yard on or after May 16, 1981. The status of this record leads us to the conclusion that such work was performed by Clerical employees at Southover Yard after the effective date of the Positions or Work Scope Rule. On the property, the Organization presented a bid for "Air Bleeder - Job No. 215" at Southover Yard with hours of 9:00 P.M. to 5:00 A.M. which was posted by the Carrier on May 20, 1991.

While the "principal and/or preponderant duties" do not specifically mention "air bleeding," the fact that the Carrier posted an "Air Bleeder" position after the effective date of the Positions or Work Scope Rule is nevertheless a prima facie showing that air bleeding work was performed by a Clerical employee at Southover Yard. If air bleeding was not being performed at Southover Yard as of May 20, 1981 by a Clerical employee, why would the Carrier post a position in the Clerical craft for an "Air Bleeder?" On the property, the Carrier did not sufficiently answer that question.

Therefore, the status of this record sufficiently shows that after the effective date of the Positions or Work Scope Rule some air bleeding work was performed by a Clerical employee at Southover Yard. When the air bleeding work was transferred away and then later returned to Southover Yard along with the switching work in 1986, a portion of the work formerly performed by Clerical employees should have also been returned to the Clerical craft. By failing to assign a portion of that work to the Clerical craft which work was performed after the effective date of the current Rule 1(d) the Carrier violated Rule 1(d). To that extent, the claim will be sustained.

But, the next question is what should the remedy be? The Organization seeks payment to the "...Senior Available Clerk eight (8) hours' pay per day, seven (7) days a week ...." We find, in agreement with the Carrier, that such a request is clearly excessive. The burden here is on the Organization to demonstrate the extent of the damages and the propriety of the remedy it seeks. We find that the Organization has not carried that burden for the extent of the remedy it seeks. There is nothing in this record to support a finding that after May 16, 1981 a Clerical employee performed air bleeding work eight hours per day, seven days per week. We again return to the May 20, 1981 Air Bleeder job posting which the Organization so heavily relied upon. Specifically, that posting listed the following as "principal and/or preponderant Duties":

"Drive Company vehicle as required, perform janitorial duties and supply cabs, perform messenger service as needed and any other duties that may be assigned."

Therefore, while called an "Air Bleeder," this record does not demonstrate that the position did much "air bleeding." Although we have found that air bleeding was performed by Clerical employees at Southover Yard, as far as this record is concerned, air bleeding was not a major part of the job.

In light of our discretion to formulate remedies and considering that as far as this record is concerned the actual performance of air bleeding was not a major part of the duties specifically listed in the Air Bleeder posting, and further considering that the air bleeding work was originally shared with Switchmen at Southover Yard, we find that an appropriate remedy in this case is to award the Senior Available Clerk pay for 30 minutes per day at the appropriate Air Bleeder rate specified in the posting (\$70.13 per day as contractually adjusted) commencing July 11, 1987 until the Carrier assigns 30 minutes per day of air bleeding work to the Clerical craft at Southover Yard.

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 6th day of April 1995.