Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30778
Docket No. CL-29967
95-3-91-3-362

The Third Division consisted of the regular members and in addition Referee Dana E. 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-10604) that:

(Organization File No. SCL-1.721(8); Carrier's File No. 6(89-623)

1. Carrier violated Rule 1 (Scope), of the Agreement, as well as other rules, when, beginning February 24, 1989, and continuing, it allowed, permitted, or required employees of General Railway Service to perform work assigned to and normally performed by phosphate handlers (TCU members) at Rockport Phosphate loading facility, Rockport, Florida.

2. Account violation above, Carrier shall compensate six (6) of the Senior Idle Employes, unassigned in preference, eight (8) hours' pay at Phosphate Handler's rate for February 24, 1989, and each subsequent day the violation occurs. Regularly assigned employe to be compensated eight (8) hours' pay at the rate of time and one-half (1 1/2) the Phosphate Handler's rate for February 24, 1989, and each subsequent day the violation occurs. Claim is to include all subsequent pay increases including COLA.

3. In addition, Carrier shall now be required to return the work made subject to claim to the clerical craft from whom it was improperly removed.

4. Proper Claimant to be determined by a joint check of Company's records."

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.

Carrier maintains a ship loading facility for exporting of phosphate at Rockport, Florida. The phosphate comes from various mines throughout central Florida. On February 24, 1989, six employees of a local contractor, General Railway Service, began cleaning phosphate cars at Rockport. A total of ten cars were to be cleaned each weekday, utilizing a five man crew plus a supervisor.

On March 27, 1989, the Local Chairman filed a claim on behalf of "the six (6) senior available employees, unassigned in preference," for eight (8) hours, "beginning February 24, 1989." The Organization maintained that prior to February 24, 1989, any phosphate car which required cleaning at Rockport "was assigned to Phosphate Handlers (TCU members) at that point." The Organization did not rely on the "exclusivity" aspect of Rule 1-Scope Rule, but rather on Section(c) of Rule 1, the portion of which speaks specifically to "cleaning freight equipment." Carrier denied the claim asserting that the only "car cleaning" that the TCU-represented employees had exclusively performed in the past was biannually to insure that a block of fifty cars were empty in order to calibrate the belt scale. Carrier continued by maintaining that cars are cleaned for commodity loading at various locations where Clerks are employed, but "are not cleaned by clerks at all such locations." Finally, Carrier submitted that subcontracting of the work was necessary to utilize automated equipment which more efficiently cleans the cars on a daily basis.

During a subsequent claims conference, the Organization furnished the Carrier with work reports at the Rockport Terminal during October and November 1984 which the Organization contends prove that clerical employees clean cars other than when required to do so for light weight purposes; and a copy of a bulletin in June 1988 for a Car Cleaner position at Lakeland, Florida (Winston

Yard) which show car cleaning as one of its duties. The Organization further pointed out that: "Since only clerical employees were assigned car cleaning at Rockport, this dispute is being progressed under the provisions of the amended Scope Rule. Note the side letter Agreement provides that:

> "This will not be construed as license to remove work from the coverage of the agreement on or after May 16, 1981 (effective date of the agreement) except in accordance with the rule or rules of the Seaboard Coast Line Agreement."

Carrier asserted, as a threshold argument, that the Organization's "failure to identify a proper claimant is reason enough" for this claim to be declined. Claimants are readily identifiable from a list of "Senior Idle Employees," and that is sufficient. Upon review of the merits of this dispute, we find a preponderance of the evidence supports the Organization's assertion that the work in dispute is "cleaning freight cars" within the meaning of Rule 1, Section (c). Moreover this work has been regularly performed by TCU-represented employees at the Rockport Phosphate loading facility and elsewhere on the system. The Agreement language is clear and it is corroborated by probative evidence of practice. Carrier's Quality Action Committee apparently concluded that the outside contractor could do a better job of performing the Agreement-covered work than Agreement-covered employees, but the work reservation language cannot be unilaterally jettisoned just because it is deemed inconvenient or inefficient.

AWARD

Claim sustained.

ORDER

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.

SERIAL NO. 363

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 30778

DOCKET NO. CL-29967

NAME OF ORGANIZATION: (Transportation Communications
(International Union

NAME OF CARRIER: (CSX Transportation, Inc.

The Board issued a sustaining decision in Award 30778, dated April 6, 1995, deciding Docket CL-29967. The standard order accompanying that Award directed Carrier to make the Award effective on or before thirty (30) days following the postmark date the award was transmitted to the Parties. By letter dated September 25, 1995, the Organization's General Chairman advised the Board that "a dispute exists between the Parties with respect to the proper interpretation of Award No. 30778, Docket CL-29967" and requested "an official interpretation thereon." Upon due notice, Carrier joined in the request for interpretation. Both Parties filed supplemental briefs and presented oral argument before the Board, on June 16, 1996.

The claim in Docket CL-29967 read as follows:

"Claim of the System Committee of the Brotherhood that:

1. Carrier violated Rule 1 (Scope), of the Agreement, as well as other rules, when, beginning February 24, 1989, and continuing, it allowed, permitted, or required employees of General Railway Service to perform work assigned to and normally performed by phosphate handlers (TCU members) at Rockport Phosphate Loading Facility, Rockport, Florida.

2. Account violation above, Carrier shall compensate six (6) of the Senior Idle Employees, unassigned in preference, eight (8) hours' pay at Phosphate Handler's rate for February 24, 1989, and each subsequent day the violation occurs. Regularly assigned employee

to be compensated eight (8) hours' pay at the rate of time and one-half (1 ½) the Phosphate Handler's rate for February 24, 1989, and each subsequent day the violation occurs. Claim is to include all subsequent pay increases including COLA.

3. In addition Carrier shall now be required to return the work made subject to claim to the clerical craft from whom it was improperly removed

4 Proper Claimant to be determined by a joint check of Company's records

Award 30778, sustaining the quoted claim, includes findings of fact, contract interpretation and a remedial order, reading in pertinent part as follows:

"Carrier maintains a ship loading facility for exporting of phosphate at Rockport, Florida. On February 24, 1989 six employees of a local contractor, General Railway Service, began cleaning phosphate cars at Rockport. A total of ten (10) cars were to be cleaned each weekday, utilizing a five man crew plus a supervisor....On March 27, 1989, the Local Chairman filed a claim on behalf of the six (6) senior available employees, unassigned in preference, for eight (8) hours, beginning February 24, 1989.' Upon review of the merits of this dispute, we find a preponderance of the evidence supports the Organization's assertion that **the work in dispute is 'cleaning freight cars' within the meaning of Rule 1, Section (c).** The Agreement language is clear and it is corroborated by probative evidence of practice." (Emphasis added)

AWARD

Claim sustained

ORDER

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"

The claim sustained by this Board in Award 30778 was predicated upon application of the express language of Rule 1, Section (c) to a specific proven set of facts

giving rise to that claim; i.e., on February 24, 1989, and for an indeterminate period of time thereafter, Carrier utilized the services of six employees of a local contractor, General Railway Service, to clean phosphate cars at its Rockport, Florida, Phosphate Loading Facility. We were persuaded from the record evidence that performance of that specific work at that specific location was reserved to Claimants by the language of Rule 1, Section (c) of the Scope Rule in the Agreement of June 1, 1981. That was the only issue presented for our determination in Docket CL-29967 and that is the only issue we decided in Award 30877.

As nearly as we can determine from an inadequately developed record, the dispute which the Parties now attempt to have resolved through the medium of an "Interpretation of Award 30778" concerns whether relocation of the phosphate car cleaning work performed by General Railway Services on and after February 24, 1989 at the Rockport Phosphate Loading Facility to a different location for performance by a different outside contractor or other employees not covered by the CSX/TCU Agreement would cure the violation found and toll the damages awarded in Award 30778.

We find that we are unable to answer those questions on this record in the context of this Interpretation request. Accordingly, we must respectfully decline to do so. Not least of the reasons impeding our expression of an informed judgement on the disputed point is the apparent conflict of material facts between the Parties as to whether or when the specific work grieved in Docket CL-29967 was relocated from the Rockport, Florida, Phosphate Loading Facility to another location in Florida for performance by other outside contractors and/or employees. We will not decide such an important matter on the basis of speculation, hypotheses or irreconcilably conflicted material facts. However, the primary reason we decline to answer the issue presented is that it constitutes a different dispute than the fact-specific, location-specific claim which we decided in Award 30778, Docket CL-29967.

If the Parties jointly wish for us to undertake determination of that <u>different</u> dispute on the basis of an adequate factual record, we would undertake to do so. But it is neither possible nor appropriate for us to do so on the basis of the present claim.

In our considered judgement, the particular claim submitted in Docket CL-29967 was determined with finality by the sustaining decision in Award 30778. That decision

held that the specific action of the Carrier which the Organization grieved did constitute a violation of Rule 1 (Scope), Section (c). That decision obligates Carrier to compensate each of six individual Claimants, whose identity is readily determined by a joint check of calling records on and after February 24, 1989, eight hours' pay at the rate of time and one-half the Phosphate Handler's rate (inclusive of subsequent pay increases including COLA), for February 24, 1989, and for each subsequent day when that specific grieved violation occurs until the violation ceases. Those determinations and directives are reiterated herein. It is well settled that enforcement of its own decisions is beyond the purview of this Board, but we do urge and anticipate prompt compliance with Award 30778.

Referee Dana E. Eischen who sat with the Division as a neutral member when Award 30778 was adopted, also participated with the Division in making this Interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 4th day of March 1997.

SERIAL NO. 369

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

INTERPRETATION NO. 2 TO AWARD NO. 30778

DOCKET NO. CL-29967

NAME OF ORGANIZATION: (Transportation Communications International Union

NAME OF CARRIER: (CSX Transportation, Inc.

INTERPRETATION: The Board issued a sustaining decision in Third Division Award 30778, dated April 6, 1995, deciding Docket CL-29967; and subsequently issued Interpretation No. 1 under date of March 4, 1997. By joint letter dated November 5, 1997, the Organization's General Chairman and Carrier's Director Labor Relations advised the Board that the Parties had arrived at a mutually satisfactory procedure for identifying the appropriate Claimants and their respective proportionate share of the overall damages payable in compliance with Award 30778.

On that basis, the Board adopts and endorses the final disposition of this matter set forth in pertinent part in the above-referenced Joint Letter, and directs compliance with those terms and conditions, as follows:

1) The group of Claimants would include all employees represented by TCU who worked at the Rockport Pier Facility on seniority roster SC 23 during the claim period and who have remained actively at work, are on sick leave, or have subsequently retired or died, except that any former employee who has accepted a separation payment and signed a Resignation Agreement and Release is not included in the group of Claimants.

2) Each of these Claimants shall receive a proportionate share of the $330,000.00 equal to the ratio of the number of months worked by that employee during the claim period to the total number of months worked by TCU members during the claim period.

Referee Dana E. Eischen who sat with the Division as a neutral member when Award 30778 was adopted, also participated with the Division in making this Interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of February 1998.