

Excluded,  
clearly not a record of  
activity.  
✓ carrier records

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 30815  
Docket No. CL-30751  
95-3-92-3-554

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn 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 Organization (GL-10842) that:

(1) The CSX Transportation has violated the Agreement when it required or caused employees not covered under the Scope of the current working Agreement to perform duties assigned to and historically performed by the clerical craft.

(2) Because of the aforementioned violation, the CSX Transportation shall now be required to compensate the Senior Available Employee, Guaranteed Extra Board or furloughed in preference, eight (8) hours at the current overtime rate, to begin on April 1, 1991, and shall continue on a daily basis seven (7) days per week, three (3) shifts per day, until work is returned to the clerical craft."

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.

Commencing on or about April 1, 1991 Yardmasters began to mark switch lists for yard crews to switch at Davis Yard, Wilmington, North Carolina. Prior to that time, that work was performed by clerical employees. Although the work was assigned outside of the craft, no clerical positions were abolished, nor did clerical employees suffer a diminution of work. The assignment of this work away from the craft was made in order to have the tracks switched in a timely fashion, and because the clerical employees were overworked and working without an extra board. It appears that the increased workload was the result of the shipment of munitions required by Operation Desert Storm.

Rule 1(d) states in pertinent part 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." The Carrier's argument that the clerical employees did not perform the work on an exclusive basis is therefore not persuasive. See Third Division Award 29401. ("The Carrier has argued exclusivity in this case, but the Scope rule in force between these parties is not general in nature and thus, exclusivity need not be established.")

We find that the record sufficiently establishes that clerical work concerning switch lists was assigned to Yardmasters. A violation of Rule 1(d) has been shown.

The difficult question is how to remedy the demonstrated violation in terms of making the affected employees whole. The Organization seeks eight hours at the current overtime rate continuing on a daily basis seven days per week, three shifts per day for the senior available employee. We find that request excessive. The record does not show that the work was that extensive. But, nevertheless, because Yardmasters were performing the work of the clerical employees, there was a loss of work opportunities for clerical employees as a whole. The difficulty is in pinpointing the amount of that loss. We recognize that there are differing approaches to formulation of remedies. But, given these factors, for this Board to pick a number in this case would be arbitrary on our part. We could not justify such a selection.

Because the record does not sufficiently demonstrate the amount of clerical work involved which was actually performed by Yardmasters and further recognizing that the amount of performance of that work by Yardmasters may have fluctuated over time in that Operation Desert Storm is now over, we shall remand this matter to the parties to attempt to calculate in the first instance the amount of work involved. The affected employees shall then be made

whole at the appropriate contract rate until the work is returned to the clerical craft. This Board shall retain jurisdiction for disputes concerning the remedy.

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 27th day of April 1995.