

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 33173  
Docket No. CL-31840  
99-3-94-3-142**

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman 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 Organization (GL-11021):**

**Claim No. 1**

**Claim on behalf of Mr. Richard Shearer for seventy (70) hours at the rate of \$13.47, a total of \$942.90, for thirty-five working days during the period of September 7, 1987, through October 23, 1987, account his work being transferred and performed by other departments and outside vendors in violation of Rule 1, 23 and others.**

**Claim No. 2**

**Claim on behalf of Mr. Richard Shearer for forty (40) hours at the rate of \$15.31 per hour, a total of \$612.40, for twenty (20) working days, two hours per day, for the period February 1, 1992 through February 29, 1992, account his work being transferred and performed by other departments and outside vendors in violation of Rules 1, 23 and others.”**

**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 were given due notice of hearing thereon.

Combined for presentation to the Board are two claims that involve the Carrier's use of an outside vendor to supply various Carrier departments and whether that usage violated the parties' "position and work" Scope Rule.

These two claims are companion cases to 55 claims that were previously reviewed in Third Division Award 32267. In that decision the Board determined that the parties had presented the identical Scope Rule dispute to Public Law Board No. 3540 wherein it was agreed to accept the decision of Award 58 as settling the other 55 claims. Award 32267 stated in part:

"From the above excerpts, it is clear to this Board that the Organization set forth its belief that the claims here under review are 'similar' to those considered in Public Law Board No. 3540, Award 58 and that the Organization, in exchange for the extension of time limits, was prepared to accept that Award as settling these pending claims.

Consequently, it is now far too late for the Organization to take the entirely different position that the facts in the pending claims are at odds with those considered in Public Law Board No. 3540, Award 58 and that this Board should proceed as if there had been no agreement as repeatedly confirmed in the General Chairman's correspondence."

Our review of this record indicates that the two claims at bar were part of the same aforementioned abeyance Agreement. Accordingly, it thus is too late for the Organization to argue that the claims are different than the claim settled by Public Law Board No. 3540, Award 58.

Form 1  
Page 3

Award No. 33173  
Docket No. CL-31840  
99-3-94-3-142

Award 32267 is controlling in this instance and because of such, the instant claims are denied.

**AWARD**

Claim denied.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

Dated at Chicago, Illinois, this 25th day of March 1999.