

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33906
Docket No. CL-33965
00-3-97-3-499**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11797) that:

- (a) I am filing claim on behalf of Ms. Beverly Myers, Clerk, Collections Department, Boston and Maine Corporation (Springfield Terminal Railway Company). This claim is for the following dates: November 30 and December 1, December 4 through 8, December 11 through 15, December 18 through 22, and December 26 through 29, 1995. Claim is for eight hours at the time and one-half rate.**
- (b) Carrier violated the Agreement when it brought in Agency work of demurrage and miscellaneous billing, also charges for weight, switching, storage, transit and diversions. Work has been brought in from Lawrence, East Deerfield, Fitchburg, Ayer, Boston, Holyoide, Rigby and Waterville to North Billerica, MA.**
- (c) The Rules violated are 1, 11, 13, 15, 16 and the Stabilization Agreement of 1965, which was amended in 1984.**
- (d) Claim is valid and must be paid.**

II Claim of the System Committee of the TCU (ST96-52) that:

- (a) On behalf of Ms. Beverly Myers, Clerk, Collections Department, Boston and Maine Corporation (Springfield Terminal Railway Company). This claim is for the following dates: November 1, December 1, December 4 through 8, December 11 through 15, 18**

through 22, through 29, 1995. Claim is for eight hours at the rate of time and one-half.

- (b) Carrier violated the Agreement when it took customers that Ms. Myers was handling and gave the work of corresponding and collections to a non-agreement employee. The non-agreement employee is doing scope clerical work in the Collections Department each of the days listed above.
- (c) Rule 1 of the Agreement is being violated, also Rules 2, 17 and 64. Also the Stabilization Agreement of 1965, which was amended on October 17, 1984.
- (d) Claim is valid and must be paid."

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.

This claim involves an allegation that Carrier brought in additional Agency work which it assigned to Claimant on the various claim dates and removed other scope-covered work from Claimant on these same dates and assigned that work to non-agreement employees.

For its part, the Organization contends that Carrier's actions with respect to Claimant's job performance violates Rules 1, 2, 11, 13, 15, 16, 17 and 64 of the Agreement, since her job bulletin specifies the functions which make up her assignment.

Carrier initially alleges a procedural defect with the handling of the case on the property. It also contends that there were no material increase in duties in Claimant's job, and notes a procedure for handling rate adjustments contained in Rule 14 if a material change in job content has occurred. Carrier further argues that the penalty rate requested is excessive.

The record on the property reveals the parties' understanding that several cases being processed at the time were identical in nature and should be held in abeyance pending resolution by arbitration of one of the cases. This Board has reviewed Third Division Award 33617, and finds that it raises identical issues concerning the same Claimant for an earlier time period in 1995. In that case, the Board adopted the conclusion that Carrier breached the Agreement by assigning clerical work to employees not covered by the Scope of the Agreement. However, it found that the appropriate remedy for such violation under the circumstances of the case, was for pay at the straight-time rate of pay.

We find that the conclusions of the Board in Third Division Award 33617 are equally applicable herein, and govern the outcome of these claims. Accordingly, we direct Carrier to compensate Claimant for the hours noted on each of the claim dates at her straight time rate of pay.

AWARD

Claim sustained in accordance with the Findings.

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 24th day of January, 2000.