

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34033
Docket No. CL-34526
00-3-98-3-162**

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: (
(Burlington Northern Santa Fe Railway Company**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11920) that:

Claim is hereby filed as set forth below account of Carrier violation of the Crew Hauling settlement as defined by the letter dated May 18, 1987 settling the claim covered by Carrier's file CCLA 85-2-11 and Organization's file c-5639(2-85)H and Mr. Liggett's letter of June 8, 1987.

Carrier violated and continues to violate the above mentioned Agreements, Rule 1 and other pertinent rules of the May 6, 1980 BN/TCU Agreement at Superior, Wisconsin beginning April 5, 1994, and continuing every day henceforth, that the Carrier violates the above mentioned rules. Carrier began utilizing a private contractor to perform crew hauling function on or about April 5, 1994. Since that date Carrier has failed to abide by paragraph three (3) of the settlement letter dated May 18, 1987, Carrier file CCLA 85-2-11.

Due to Carrier's blatant violation of the above Agreements, Carrier shall now be required to:

- 1. Return all work to employees covered by the Scope of the BN-TCU Agreement.**
- 2. Compensate the first-out qualified and available GREB employee at Superior, Wisconsin, for eight (8) hours pay at the pro-rata rate of Crew Hauler for each day Carrier violates the Agreement as described herein. If no GREB employees are available on any given**

date of violation, claim shall be for the first-out qualified and available Extra List employee on the Terminal Extra List for eight (8) hours pay at the pro-rata rate of Crew Hauler, per day. If neither GREB or Extra List employees are available on any given date, claim shall be for actual time in accordance with paragraph three of the Carrier's letter of May 18, 1987, file CCLA 85-2-11, at the punitive rate of Crew Hauler in accordance with Rule 37, for each day Carrier violates the Agreement's as described herein."

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.

As Third Party in Interest, the United Transportation Union/Yardmasters Department was advised of the pendency of this dispute, but it chose not to file a Submission with the Board.

This dispute concerns crew hauling away from the Superior, Wisconsin Terminal. A similar dispute concerning crew hauling within that Terminal was decided in Third Division Award 34031.

The relevant facts concerning the initial crew hauling claim, the parties' 1987 resolution and the Carrier's 1994 cancellation of the resolution are set forth in Award 34031. There we found that after the Carrier canceled the May 18, 1987 Memorandum, the Crew hauling work within the Superior Terminal was exclusively Clerks' work. We further found in that Award that Pokegama Yard and Boylston were not "within" the Superior Terminal.

The principles for resolving this dispute are also set forth in that Award. When the Carrier opted in February 1994 to cancel the May 18, 1987 Memorandum, "[that action effectively restored the status quo ante back to June 1, 1987 (the effective date of the May 18, 1987 Memorandum)." The question here is what was that status quo ante?

That question is answered by the transcript of the June 4, 1987 meeting. At that meeting, the following was represented to the employees without an objection from the Carrier officials in attendance:

"[Question from audience] . . . Is my understanding correct that all the crew hauling within the terminal belongs to the clerks first and foremost and any hauling outside the terminal would belong to the clerks and the outside carrier's or the outside transportation.

[A] Right now, as long as this agreement is in effect, work in and out of the terminal belongs to clerical employees working these jobs. If this agreement was not into effect, what you said is correct, the work within the terminal belongs exclusively to clerks. The work outside of the terminal belongs on a ratio of 6:3 within a twenty-four hour period to clerks and contractors." [Emphasis added].

And, as we found in Award 34031, Pokegama Yard and Boylston are to be considered "outside" the Superior Terminal.

The parties previously performed a joint check and determined that the Clerks were entitled to six hours of such work and contractors were entitled to three hours. The represented entitlement will therefore hold in this case. In terms of compensation, as in Award 34031, the parties are directed to conduct a joint check of the Carrier's records within 60 days (unless the parties mutually agree to extend that time) to determine the amount of crew hauling performed by strangers to the Agreement outside the Superior Terminal after the Carrier terminated the May 18, 1987 Memorandum as a result of its February 3, 1994 notice. The affected employees shall be accordingly made whole consistent with the six-hour requirement.

AWARD

Claim sustained in accordance with the Findings.

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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 25th day of May, 2000.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 34033

DOCKET NO. CL-34526

NAME OF ORGANIZATION: (Transportation Communications International Union

NAME OF CARRIER: (The Burlington Northern and Santa Fe
(Railway Company

On May 25, 2000, the Board issued a partially sustaining Award in this matter. The Organization has now requested an Interpretation of that Award.

This Award is the companion to Third Division Award 34031 which issued on the same date and for which the Organization has also requested an Interpretation.

In Interpretation No. 1 to Award 34031, we held the following:

“We shall therefore remand this matter to the parties and direct that they develop a complete record and written positions concerning the disputed work; whether such work falls within the scope of the remedy we imposed; and what effect, if any, Side Letter No. 6 has on the remedy. The parties shall have 60 days from the date of this Interpretation to exchange in writing their respective positions. The parties shall then have an additional 60 days to exchange rebuttals. If at the end of that period the parties have still been unable to resolve their differences, the Organization has 60 days to make a request for a second Interpretation and the Carrier will be afforded an opportunity to respond, after which the Board will then take the matter under consideration.”

For reasons fully discussed in Interpretation No. 1 to Award 34031, the same shall apply to this Interpretation.

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**Serial No. 397
Interpretation No. 1 to
Award No. 34033
Docket No. CL-34526**

Referee Edwin H. Benn who sat with the Board as a neutral member when Award 34033 was adopted, also participated with the Board in making this Interpretation.

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

Dated at Chicago, Illinois, this 27th day of October 2004.