

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36107
Docket No. CL-36469
02-3-01-3-56

The Third Division consisted of the regular members and in addition Referee John B. LaRocco 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-12694) that:

1. Carrier violated the Agreement, (Scope Rule) during the month of January 2000, when it used an outside contractor, PTI Taxi, and others not covered by the Agreement to transport train crews and others at Rocky Mount, North Carolina.
2. Carrier shall now compensate the Senior Available Employee (extra in preference) eight (8) hours' pay at the applicable rate claimed for each violation.”

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.

During January 2000, the Organization initiated 88 claims charging that the Carrier violated the Scope Rule of the Agreement when it retained an outside entity, Professional Transportation Inc. (PTI), to transport train and engine service crews at and around Rocky Mount, North Carolina. More specifically, the claims allege that PTI transported crews between the Rocky Mount Terminal and a local lodging facility. On behalf of the various Claimants, the Organization seeks eight hours of pay per claim.

Public Law Board No. 5782 recently adjudicated a dispute regarding crew hauling work at Rocky Mount. In Award 31 issued on August 19, 1999, Public Law Board No. 5782 ruled that the Carrier violated the Scope Rule when it used an outside taxi service to transport train crews "... in and around the railroad property at Rocky Mount, North Carolina." The Board concluded that, historically, Clerks almost always hauled crews at Rocky Mount. The Board acknowledged that on a rare basis (usually emergencies), Carmen and Supervisors transported crews. The Board opined that the Carrier resorted to using an outside taxi service in lieu of the Clerks because of a short supply of available Clerks at Rocky Mount following the centralization of many clerical functions into Jacksonville, Florida. Without directly saying so, the Board implied that a shortage of clerical employees does not justify the Carrier's breach of the Scope Rule.

In this case, the Organization vigorously argues that the Board should affirm and follow the holding of Public Law Board No. 5782, Award 31. The Organization alternatively argues that it submitted sufficient evidence to demonstrate that the "positions and work" Scope Rule bars the Carrier from contracting out crew hauling work to persons not covered by the Agreement. The Organization submitted statements from employees asserting that Clerks, to the exclusion of all others, transported crews in the Rocky Mount area in the past.

The Carrier counters that Public Law Board No. 5782 erred in reaching its decision in Award 31 and, at most, the Board narrowly held that Clerks have the right to haul crews within the Rocky Mount Terminal. The Carrier proffered statements from Supervisors attesting that they hauled crews at Rocky Mount in the past. In addition, the Carrier submitted two statements from PTI employees declaring that PTI and its predecessor limousine company hauled crews at Rocky Mount as far back as 1992. The Carrier also placed into the record contracts it entered into with taxi services to haul crews on the Florence Division.

Rule 1(d) of the Agreement, as amended May 16, 1981, provides:

"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. It is understood that positions may be abolished if, in the Carrier's opinion, they are not needed, provided that any work remaining to be performed is reassigned to other positions covered by the Scope Rule."

Rule 1(d) is a "positions and work" Scope Rule and thus, the Organization need not show system-wide exclusivity over the disputed work to bring Rocky Mount crew hauling within the protection of the Scope Rule.

The record herein contains substantial evidence that clerical employees historically, regularly, traditionally and routinely hauled train and engine crews at

Rocky Mount. Supervisors, in exigent situations, sometimes transported crews. The evidence demonstrates that clerical employees hauled crews from the yard to the motel and from the motel to the yard. In addition, clerical employees occasionally went to outlying points to transport crews from the line of road to the Rocky Mount Terminal.

In contrast, the record contains only a scintilla of evidence that outside entities hauled crews on a regular basis at Rocky Mount during the last ten or 20 years. The Carrier incorporated into the record contracts with various limousine companies, but these contracts covered other locations. More specifically, the record does not contain any evidence that any taxi service contract was ever implemented at Rocky Mount. The statements from the PTI employees are self-serving. The statements were made after Public Law Board No. 5782 issued Award 31 and so, the Board wonders why PTI workers are suddenly coming forward with these declarations.

In sum, the Board concludes that the work of hauling crews at Rocky Mount is covered by Rule 1(d). The Carrier cannot remove the work from TCU represented employees except by agreement. Our holding does not bar the Carrier from continuing to use Supervisors to haul crews in exigent circumstances.

The ruling of Public Law Board No. 5782, Award 31 confirms our conclusion. Both parties submitted essentially the same evidence to Public Law Board No. 5782 that they submitted to the Board. Public Law Board No. 5782 was made aware of the various contracts the Carrier entered into with outside transportation services. Yet, Public Law Board No. 5782 definitively adjudged that the disputed work belonged to the clerical craft. Public Law Board No. 5782's decision was not based on erroneous, inaccurate or incomplete information. The Carrier submits that Public Law Board No. 5782 based its decision on the misconception that the Carrier retained an outside entity to transport crews at Rocky Mount due to a shortage of clerical employees. The Carrier points out that prior to the Jacksonville centralization, four Rocky Mount clerical positions were dedicated to transporting crews and janitorial duties. The Carrier presented evidence herein that, following the centralization, there were six clerical positions (including one relief position) at Rocky Mount that were used to cover custodial and crew transportation tasks. Unlike Public Law Board No. 5782, the Board need not comment on the Carrier's motive for retaining an outside entity to transport train and engine crews at Rocky Mount. The Carrier's motive is usually immaterial to determining whether the Carrier breached the Scope Rule. Suffice it to state, the Board finds that the work of transporting train and engine crews at Rocky Mount, absent an exigency, is preserved to Clerks under the Scope Rule regardless of why the Carrier desires to contract out the work to an outside entity.

Finally, the Carrier argues that, in Award 31, Public Law Board No. 5782 restricted its ruling to crew hauling work within the terminal. A perusal of Award 31 does not disclose any such restriction. Furthermore, Award 31 referred to the disputed work as occurring in and around the Carrier's property at Rocky Mount. This record

includes the claims submitted to Public Law Board No. 5782. Those claims cover instances where non-Agreement covered employees transported train and engine crews to and from the motel and from outlying points into the yard. Thus, by sustaining the claims, Public Law Board No. 5782, Award 31 implicitly encompassed crew hauling work beyond terminal limits.

The Organization's requested remedy is excessive. The record does not contain sufficient proof that the outside entity consumed eight hours hauling each crew. Following the precedent set by Award 31 of Public Law Board No. 5782, each claim is sustained for a two-hour and 40-minute call.

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 22nd day of July 2002.