

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36336
Docket No. CL-36662
02-3-01-3-201**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(CSX Intermodal Terminals, Inc. (former CSX/Sea-Land
(Terminals, Inc.) Fruit Growers Express Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12725) that:

The following claim is hereby presented to the Company in behalf of Mr. M. S. Fickell.

- (a) The Carrier violated the Clerks’ Rules Agreement effective July 1, 1979, particularly Rules 1, 24, 40 and other rules when it assigned and permitted a Parsec Employee, Mr. Chris Clark, to perform clerical duties such as, training Mr. W. L. Foucht on the Lead Programmer Position, symbol 153, hours 7 a.m. to 3 p.m., on November 29 and December 1, 1999 and failed to call and utilize Claimant, Mr. M. S. Fickell to perform this work at the Columbus, Ohio Intermodal Terminal.
- (b) Claimant Mr. M. S. Fickell must now be allowed eight (8) hours pay at the appropriate punitive rate of pay for each day November 29 and December 1, 1999 on account of this violation.
- (c) This claim has been presented in accordance with Rule 45 and must be allowed.”

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.

Pursuant to Agreements that became effective June 1, 1999, all positions were designated as Intermodal Service Representatives (ISR's). On the dates in question, the employee of a contractor instructed an ISR on how to perform certain work that had previously been performed by that contractor, but which was to be done in the future by Carrier employees.

By letter dated December 3, 1999, the Organization filed the instant claim, asserting that the Carrier should have called the Claimant to perform those training functions. The claim must fail for two reasons. First, while we concur with the Organization that work embraced within the scope of the Agreement may not properly be removed therefrom by the Carrier and assigned to employees not subject to the Agreement, the Organization in this case failed to establish that the work is scope covered. Nothing in the Agreement reserves to TCU-represented employees the right to perform training functions. Second, it is undisputed that neither the Claimant nor any other Carrier employee was familiar with the specific work performed by the contractor. As the Carrier correctly argues, the Claimant therefore would have been unqualified to train others to perform this particular work.

In claims involving work scope, the burden rests with the moving party to establish that the work comes within the coverage of the Agreement. The Organization did not meet that burden in this instance. Accordingly, the claim must be denied.

AWARD

Claim denied.

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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 26th day of December 2002.