Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37227
Docket No. CL-37035
04-3-02-3-1

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(CSX Transportation, Inc. (former Seaboard Coast
(Line Railroad)
PARTIES TO DISPUTE: (
(Transportation Communications International Union

STATEMENT OF CLAIM:

"Carrier File 6(01-0351) TCU File 1.2615(18)SCL

1. Carrier violated the Agreement(s) on November 4, 2000, when it allowed Yardmaster R. R. Weyer to make Yard Inventory Adjustments (YSIA) on train/track/cut at Evansville, Indiana. This violation was performed in lieu of allowing this work to be performed by Clerical employes in the Customer Service Center at Jacksonville, Florida.

2. Carrier shall now compensate the Senior Available Employe, extra or unassigned in preference, eight (8) hours at the applicable rate of $147.14 or the punitive rate, if applicable, for the above violation.

Carrier File 6(01-0080) TCU File 1.2549(18)SCL

1. Carrier violated the Agreement(s) on August 20, 24 and 30, 2000, when it allowed Yardmaster/Clerk (as specifically named in each claim) to make Yard Inventory Adjustments (YSIA) on train/track/cut at Evansville, Indiana. This violation was performed in lieu of allowing this work to be performed by Clerical employes in the Customer Service Center at Jacksonville, Florida.

2. Carrier shall now compensate the Senior Available Employe, extra or unassigned in preference, eight (8) hours at the applicable rate of $147.14 or the punitive, if applicable, for the above 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.

As Third Party In Interest, the United Transportation Union - Yardmasters Department (UTU) was advised of the pendency of this dispute and chose to file a Submission with the Board.

Aside from the Labor and Carrier representatives from the Board, also present at the Referee Hearing in this matter were representatives of the Organization, the Carrier and the UTU. As a result, extensive presentations by the Organization, the Carrier and the UTU were made to the Board.

The facts and allegations in this dispute are straightforward. On the dates set forth in the claims, Yardmasters or Clerks at Evansville, Indiana, used the computerized Train Yard Management System (TYMS) function YSIA to make adjustments to freight cars in the yard inventory. The Organization asserts that work should have been performed by covered Clerks at the Customer Service Center (CSC) in Jacksonville, Florida, rather than those individuals who actually performed the work at Evansville. The Carrier and the UTU disagree.

Before discussing the merits of this claim, there is a significant amount of history to this dispute that must be reviewed.

First, the Carrier is comprised of several former railroads, among them the C&O, B&O, B&OCT, L&N, SCL and a portion of Conrail. The Evansville location is on the former L&N property.

Second, maintaining an accurate inventory of cars has evolved over the years from: (1) Yard Clerks manually walking yard tracks and recording the order of cars; (2) another manual system, Perpetual Inventory Car Location (PICL) where, after a Yardmaster directed a yard crew to switch a cut of cars, a Clerk moved paper identification documents into pigeon holes representing tracks in the yard with corresponding track lists; (3) beginning in 1987, the implementation of the computerized TYMS which automated PICL and allowed the Yardmaster to issue instructions to the yard crew on a switch list on a screen (YSIS) and then making the computer entry when the switching was completed (COMP) and to further make any adjustments (like the YSIA performed in this case); (4) in the 1990's, the introduction of Automatic Equipment Identification (AEI) which reads bar codes located on the cars and the Work Orders System (WORS) which allowed the Yardmaster to directly communicate a work order (WOIS) to a yard/train crew through the computer and the yard/train crew to use work stations to report switching activity (WOCO) all resulting in automatic updating of the yard inventory.

Third, after the Carrier served a New York Dock notice dated October 25, 1990 notifying the Organization of its intent to transfer and consolidate clerical functions throughout its system to the CSC in Jacksonville, the parties entered into an Implementing Agreement on January 29, 1991, which described the work transferred from the field to the CSC and the work that was to remain in the field. Consistent with that transfer, various positions in the field were abolished and others established at the CSC. In relevant part, the 1991 Implementing Agreement provided:

"TRANSFER AND CONSOLIDATION OF WORK

1. (a) Effective April 7, 1991 clerical and related functions performed by employees at the SCL, L&N and B&O locations shown in Attachment A to this Agreement will be transferred and consolidated with the clerical and related functions performed on Roster No. 18 for the purpose of establishing a Customer Service Center (CSC) at Jacksonville, Florida.

(b) The clerical and related work referred to in this agreement will be progressively transferred and consolidated into the CSC over a period of time based upon the estimated schedule that is reflected in Attachment A to this Agreement.

FILLING OF POSITIONS AND EXERCISE OF SENIORITY

* * *

6. (a) It is further understood that all work of the craft or class of Clerical, Office, Station and Stores employees in the offices, departments and operations covered by the Agreement shall be performed by employees holding seniority rights in and assigned to positions in the offices and departments at the locations and on the seniority districts as shown in the agreement unless otherwise agreed in writing between the Management and the General Chairman of the CSX System Board of Adjustment.

(b) It is further understood and agreed that all work that remains on the former SCL, L&N and B&O Districts and not specifically named in this Agreement, and all work transferred to District No. 18 at Jacksonville, Florida, shall continue to be in and under the respective General Agreements unless and until otherwise agreed in writing between the Carrier (CSXT) and the General Chairman of the CSX System Board of Adjustment.

* * *

ATTACHMENT A
VISION IMPLEMENTATION
35 MONTH PHASE - IN BY TSC

APRIL 1991 - MARCH 1994
Jacksonville - April 1, 1991
Tampa - June 1, 1991

Waycross - August 1, 1991
REVIEW - September 1991
Savannah - October 1, 1991
Hamlet - November 1, 1991

Rocky Mount - December 1, 1991
REVIEW - January 1 1992
Atlanta - February 1, 1992
Mobile - April 1, 1992
Birmingham - May 1, 1992
Nashville - July 1, 1992

REVIEW - August 1992
Louisville - September 1, 1992
Corbin - November 1, 1992
Cincinnati - December 1, 1992
REVIEW - February 1993
Russell - March 1, 1993

Richmond - May 1, 1993
REVIEW - July 1993
Evansville - August 1, 1993
Chicago - September 1, 1993
Detroit - October 1, 1993
Walbridge - December 1, 1993

Cumberland - January 1, 1994
Baltimore - February 1, 1994"

The position description for the Customer Service Representative (hereinafter refer to as CSR) was attached as Attachment B to the 1991 Implementing Agreement:

> "Utilizes various data and/or mechanical devices to verify and process arriving and departing cars/trains. Make patron notifications; process switching and other work orders. Handle and/or process EDI, waybills, demurrage, weight, and per diem information in accordance with rules and procedures. Handle and

update consists, error corrections, and related functions. Maintain, prepare and distribute various reports, records, forms, statements, etc., as necessary. Handle related functions, operate data devices and equipment, and other general clerical duties as required."

Fourth, the Clerks at the CSC are covered by the SCL Agreement.

Fifth, as the CSC began operations, claims were filed by the Organization asserting that certain computer functions involving issuance and completion of switch lists (YSIS/YSCS) adjustment of yard inventory (YSIA) and update of class codes (YSUC) were improperly performed by employees outside of the CSC, with the Carrier contending those functions were shared work with Yardmasters. Those claims were resolved between the Carrier and the Organization in an Agreement dated December 1, 1994 which listed specific locations where various TYMS computer functions were in dispute. In pertinent part, the December 1, 1994 Agreement provided:

"Following the Customer Service Center implementation, disputes developed at the specific locations identified below concerning the performance of three (3) computer functions: Completing switchlists; adjusting yard inventory; and updating class codes. The locations and functions involved are as follows:

Location	Switch Lists	Yard Invtry	Class Codes
Atlanta, GA		x	
Decatur, IL		x	x
Evansville, IN			x
Jacksonville, FL		x	
Miami, FL	x	x	x
New Orleans, LA		x	
Philadelphia, PA		x	
Rocky Mount, NC		x	x
Tampa, FL		x	
Terre Haute, IN			x

The Carrier maintains that at some locations the task in question was shared function with yardmasters that had never been exclusively assigned to clerical employees. At other locations, the Carrier recognizes that yardmasters had performed clerical duties and functions.

In the cases where it was determined that yardmasters performed clerical duties the Carrier took measures to insure that the work was returned to the clerical employees; however, the claims were declined due to the excessiveness of the amount claimed (eight hours per incident).

At those locations where it was determined that the work was a shared function with the yardmasters, the Carrier declined the claims on the basis that the clerical employees did not possess the exclusive rights to perform that particular function.

In order to reconcile these numerous disputes, the Carrier is willing to settle these claims in the following manner:

The Carrier acknowledges that the functions made subject to claim identified above are functions exclusively reserved to clerical employees at those locations under the Amended Scope Rule with the following exceptions:

Updating Class Codes -	Rocky Mount, North Carolina
	Decatur, Illinois
Adjusting Yard Inventory -	Decatur, Illinois
	New Orleans, Louisiana

The Carrier maintains that the particular work at the three (3) locations above is work shared by yardmasters and is not exclusively assigned to the clerical craft. It is agreed that the parties shall submit to binding arbitration three (3) cases to adjudicate these remaining disputes:

Case No. 1

Adjusting Yard Inventory at New Orleans, Louisiana

* * *

Case No. 2

Updating Classification Codes at Rocky Mount, North Carolina

* * *

Case No. 3

Adjusting Yard Inventory and Updating Classification Codes at Decatur, Illinois

* * *

Each of these claims are considered "lead" cases for several other claims held in abeyance.

As for the claims filed for tasks/locations not involved with the three (3) cases above (See Attachments "A" and "B"), the Carrier is agreeable to allow a flat sum of $15.00 per individual claim as full and final settlement."

Sixth, the parties arbitrated the Organization's claims to the disputed work described in the December 1, 1994 Agreement for the locations where agreement could not be reached. Those disputes were heard as part of Public Law Board No. 5782. The lead case (which involved a Flomaton, Alabama, Clerk's use of YSIA to move a standing cut of rail cars rather than a CSR at the CSC) was Public Law Board No. 5782, Award 1 which held:

"The Board finds that Carrier in this instance has moved the work involved in this dispute and the personnel performing that work from various locations throughout CSXT to the Customer Service Center. As a result of that move and the agreement signed

> memorializing that action (January 27, 1991 Memorandum Agreement), the parties agreed that the Customer Service Representative in the Jacksonville Center would be responsible for performing all work on the computer related to movement and recording of cars in the area covered by Jacksonville. The instant case represents one of many in which a Clerk in the field went into the computer and made a change or corrected an error. That work accrues to the Customer Service Representative in Jacksonville and constitutes a Contract violation, if performed by anyone outside of the Center.
>
> * * *
>
> In the interest of impressing Carrier with the need to adhere to the Agreement it made in regard to computer operations at the Jacksonville Center, the Board has searched for some remedy that would make its point. It has concluded that justice would be served by assessing a minimal payment of $15.00 per individual claim (not unlike similar claims on this property)."

With respect to the specific disputes referred to in the December 1, 1994 Agreement, Public Law Board No. 5782, Award 2 concerning adjusting yard inventory by a Yardmaster through YSIA at New Orleans, Louisiana, sustained the claim for ". . . a flat fee of $15.00," finding:

> "[W]ork of the type at issue in this case belongs to Clerks in Carrier's Customer Service Center in Jacksonville, Florida. The work was transferred from the field to the Center by Agreement. Employes in the Jacksonville Center have a right to the work in question."

Public Law Board No. 5782, Award 4 concerning updating class codes by a Yardmaster also sustained the claim for ". . . a flat fee of $15.00," finding that the Yardmaster:

> ". . . was not authorized to perform it. The work performed by him belonged to a Customer Service Center Clerk in Jacksonville, Florida."

Public Law Board No. 5782, Award 3 concerning using YSIA to move a standing cut of rail cars at Decatur, Illinois, by a Yardmaster sustained the claim awarding $15.00, finding:

> ". . . The Board has concluded that as a result of the January 29, 1991, Memorandum of Agreement that established the Jacksonville, Florida, Customer Service Center, the work in question belongs to Customer Service Representatives in the Center."

The above-discussed Awards in Public Law Board No. 5782 were adopted on February 14, 1997 and, until this proceeding, were never challenged by the Carrier or the UTU in any other forum.

In brief, then, yard inventory functions have evolved from manual systems to highly computerized ones; the Carrier established the CSC in Jacksonville and, through a New York Dock notice and the 1991 Implementing Agreement, various clerical positions in the field were transferred to the CSC and, at the same time, work not transferred by the Implementing Agreement remained in the field; at ten locations disputes arose concerning completing switch lists, adjusting yard inventory and/or updating class codes (depending on the location) with the parties reaching the December 1, 1994 Agreement in which the Carrier agreed that functions subject to the claims indicated in that Agreement ". . . are functions exclusively reserved to clerical employees at those locations . . . " with the exception of updating class codes at Rocky Mount, North Carolina, and Decatur, Illinois, and adjusting yard inventory at Decatur and New Orleans, Louisiana, which the parties submitted to Public Law Board No. 5782; and the Carrier did not prevail with that Board finding that the disputed work performed by Yardmasters at those locations should have been performed by clerical employees (CSRs) at the Jacksonville CSC in accordance with the transfer of work set forth in the 1991 Implementing Agreement.

Turning to the merits of this dispute, this matter was not resolved by the December 1, 1994 Agreement. As shown by the table in that Agreement, the type of work involved (yard inventory adjustment) was not checked as an area of dispute between the parties at Evansville. The disputes settled by the parties in that Agreement were the specifically named disputes concerning specific categories of work at the designated locations (those on the table set forth in the Agreement

quoted above) and with the further agreement to send three of the disputes to arbitration. Therefore, this is a new dispute.

Here, on dates in August and November 2000, Yardmasters or Clerks at Evansville (on the former L&N) used the YSIA function to make adjustments to *freight cars in the yard inventory. The 1991 Implementing Agreement clearly states* at 1(a) that "[e]ffective April 7, 1991 clerical and related functions performed by employees at the SCL, L&N and B&O locations shown in Attachment A to this Agreement will be transferred and consolidated with the clerical and related functions performed on Roster No. 18 for the purpose of establishing a Customer Service Center (CSC) at Jacksonville, Florida." (Emphasis added) And, Attachment A to the 1991 Implementing Agreement specifically lists "Evansville - August 1, 1993."

Taking the clear language of the 1991 Implementing Agreement as a roadmap, the threshold question, then, is at the time the 1991 Implementing Agreement took effect, did the specific work in dispute - performance of the YSIA function to make adjustments to freight cars in the yard inventory - constitute ". . . clerical and related functions performed by employees . . . [at the] L&N location . . ." at Evansville? If that work was performed at Evansville, then, by operation of the clear terms of the 1991 Implementing Agreement, that work ". . . will be transferred and consolidated with the clerical and related functions . . . for the purpose of establishing a Customer Service Center (CSC) at Jacksonville, Florida."

The record in this case shows that YSIA functions were performed by Clerks at Evansville prior to 1991. In its October 30, 2001 letter, the Organization generally describes statements provided by Clerks ". . . from almost every Terminal throughout the entire CSX System, indicating that it was . . . their responsibility for . . . the adjustment of Yard inventory utilizing the YSIA function . . ." and further listing other functions not relevant to this particular dispute. Consistent with that assertion, three former Clerks at Evansville (Austin, Steele and Winsett - TCIU Exhibits 24 at 88, 238 and 272) who transferred to the CSC submitted statements showing that prior to 1991 they performed YSIA functions at Evansville. According to those statements:

> "In [1988, 1989 and 1992, respectively] I transferred to Jacksonville, FL from Evansville. . . . While at this location, working in the

> Clerical Craft, myself and the other clerical employees had the responsibility of adjusting yard inventory using the YSIA, YSCD, YSCS, YSUC, YSOC, YSAD, YSEC, YSRE, YSPW, YSTF and YSBO computer functions that were assigned exclusively to the clerks.
>
> Also assigned exclusively to the Clerical Craft, then and now, are the work order functions used to issue work orders (all trains), depart all work orders, complete all work orders, and update all work orders, using the following computer functions: WOIS, WOTD, WOCO, WOAW, WOWI, WOTR, and since transferring to Jacksonville, WOCA and WOAY.
>
> This work is assigned to the clerical employees and was transferred to Jacksonville, FL under the Customer Service Center Agreement." (Emphasis added)

The record also shows that YSIA functions have been performed at the CSC by CSRs - obviously after the creation of the CSC and the transfer of work under the terms of the 1991 Implementing Agreement - with more than 200 statements from employees attesting to that fact. (TCIU Exhibit 24)

Thus, in this case and in the many similar claims before the Board and held in abeyance by the parties, the Carrier strenuously disputes the conclusion of Public Law Board No. 5782 concerning the effect of the transfer of work provisions of the 1991 Implementing Agreement and argues that the decisions of Public Law Board No. 5782 are palpably erroneous. Although the Carrier now attacks those Awards as being palpably in error, we take particular note of the fact that in its Third Party Submission to the Board, the UTU did not similarly contend that those Awards are palpably in error. In any event, we disagree with the Carrier's position that those Awards are palpably in error. The clear language of the 1991 Implementing Agreement and the facts in this case show that, consistent with the general conclusions of Public Law Board No. 5782 and particularly with respect to Evansville, the disputed work was, by Agreement, transferred from Evansville to the CSC in Jacksonville. To find otherwise would require us to conclude that Public Law Board No. 5782, Award 1 and the other Awards following that Award are palpably in error. The language of the 1991 Implementing Agreement does not allow such a conclusion. At best, and giving the Carrier the benefit of all reasonable

doubts, the conclusions from Public Law Board No. 5782 concerning the transfer of work to the CSC are debatable. However, given the language in the 1991 Implementing Agreement, those conclusions do not rise to the level of palpable error and, for purposes of stability, those conclusions must be followed.

But the fact that disputed work was previously performed at Evansville and transferred to the CSC does not end the dispute. The question now is notwithstanding that transfer of work, whether that work can be performed by employees outside of the CSC? The answer to that question must be in the negative.

First, according to Public Law Board No. 5782, Award 1, with respect to work transferred to the CSC under the 1991 Implementing Agreement, "[t]hat work accrues to the Customer Service Representative in Jacksonville and constitutes a Contract violation, if performed by anyone outside of the Center" (Emphasis added)

Second, the CSRs at the CSC are covered by the SCL Agreement. In pertinent part, that Agreement has a "positions or work" Scope Rule:

> "(d) 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."

Third, there was no agreement by the Organization to remove the work in dispute after the transfer of that work to the CSC to allow anyone other than a CSR at the CSC to perform that work.

The claims in this case therefore have merit.

With respect to the remedy, consistently the remedy for these kinds of demonstrated violations between these parties has been $15.00 per claim. See the December 1, 1994 Agreement and the Awards cited above decided by Public Law Board No. 5782. That shall also be the remedy in this case.

The arguments of the Carrier and the UTU do not change the result.

First, the Organization need not demonstrate that the YSIA function has been exclusively performed by Clerks. The work was transferred to Jacksonville from Evansville under the 1991 Implementing Agreement and the positions or work Scope Rule of the SCL Agreement then served to preserve that work to the CSRs until the Organization agreed otherwise or the positions were abolished under the conditions set forth in that Rule. And again, Public Law Board No. 5782, Award 1 clearly states "[t]hat work accrues to the Customer Service Representative in Jacksonville and constitutes a Contract violation, if performed by anyone outside of the Center."

Second, to counter the statements proffered by the Organization from the Clerks, the Carrier relies upon statements of former and current Yardmasters and other employees throughout the Carrier's property asserting that YSIA was an integral function of the Yardmaster craft, both before and after the establishment of the CSC. But those statements provided by the Carrier do not avoid the consequences of the clear language of the 1991 Implementing Agreement that transferred "the clerical and related functions" at "Evansville" to the CSC; the fact that YSIA was performed by Clerks at Evansville prior to the establishment of the CSC; Public Law Board No. 5782, Award 1 which clearly states "[t]hat work accrues to the Customer Service Representative in Jacksonville and constitutes a Contract violation, if performed by anyone outside of the Center"; and the operation of the SCL positions or work Scope Rule that preserved that work to CSRs at the CSC.

Third, Awards cited by the Carrier and the UTU apply to different carriers, different contract language, or different fact situations and are not persuasive for this dispute. Of particular reliance by the Carrier (and the UTU) are denial Awards with this Referee participating such as Third Division Awards 35513 (". . . the work claimed by the Organization is record keeping previously performed by Yardmasters on a manual basis") and 35456 ("The Organization has not shown that the implementation of TSS caused the transfer of Clerk's work to Yardmasters . . . [i]nstead, the evidence shows that TSS enabled the Yardmasters to perform <u>their</u> work more efficiently." The concept expressed in that line of Awards is that the implementation of technological advancements <u>eliminated middleman clerical functions</u> resulting from a more highly automated system. See also, Public Law Board No. 4795, Awards 1-7; Special Board of Adjustment No. 1137, Award 27. But the difference here which makes this case distinguishable from all of the other Awards cited to us by the Carrier and the UTU is that, <u>by Agreement</u>, the parties

specifically agreed to transfer the disputed work to the CSC to be performed by CSRs; the evidence shows that Clerks performed the work both before and after the transfer; there are Public Law Board Awards finding that such a transfer occurred; and there is a Rule that preserves that work to CSRs until the Organization agrees otherwise or the position is eliminated. If the Carrier and the UTU desire a different result, that will have to be achieved through the negotiation process and not through proceedings before the Board.

Fourth, the Scope Rule covering the Yardmasters also does not change the result. That Rule provides that Yardmasters' ". . . duties and responsibilities . . . include . . . [s]upervision over employees directly engaged in the switching, blocking, classifying and handling of cars and trains and duties directly incidental thereto that are required of the Yardmaster in a territory designated by the Carrier" and "[s]uch other duties as assigned by the Carrier. . . ." That non-specific Rule cannot overcome the effect of the Organization's position or work Scope Rule, the Agreements specifying the transfer of work to the CSC and the findings of Public Law Board No. 5782 concluding that the transferred work belongs to CSRs at the CSC.

There are a number of claims presently before the Board and also held in abeyance pending the outcome of this Award and the other similar disputes. Therefore, as a guide to the parties for determining these disputes, in order to prevail the Organization must show that the disputed work: (1) was performed by someone other than a CSR at the CSC; (2) was performed by a Clerk at the specific location in dispute before the 1991 Implementing Agreement took effect; and (3) was performed by a CSR at the CSC after the 1991 Implementing Agreement took effect. If the Organization makes those showings, it has sufficiently shown that the work was transferred from the disputed location to the CSC under the terms of the 1991 Implementing Agreement and was improperly performed by someone other than a CSR at the CSC. Successful showings by the Organization in that regard will result in those claims being sustained with a remedy requiring the Carrier to pay $15.00 per claim.

We are cognizant of the effect that this Award concerning the assignment of work has on the Yardmasters. Given the UTU's intervention and participation in this proceeding - and if the conditions discussed in this Award are met requiring a finding that disputed work belongs to CSRs at the CSC - the UTU on behalf of the Yardmasters now have no valid claim to that disputed work. See Transportation -

Communication Employees Union v. Union Pacific Railroad Co., 385 U.S. 157, 165 (1966) ("The Adjustment Board . . . can, with its experience and common sense, handle this entire dispute in a satisfactory manner in a single proceeding.").

Because of the number of disputes that have arisen as a result of the transfer of operations from the field to the CSC, we stress the need for stability and thus the need to follow the Awards in Public Law Board No. 5782. To do otherwise would be an invitation to chaos and would invite the filing of voluminous numbers of claims for simple day-to-day operations because of conflicting decisions from Public Law Boards or the Board. We are fully cognizant of the ramifications that the conclusions of Public Law Board No. 5782, this Award and the Awards that follow this Award, may have on the Carrier's use of personnel (be they Clerks, Yardmasters or others) at locations other than the CSC to perform various routine functions on the Carrier's sophisticated computerized yard inventory operations. We further recognize that this Award may well cause operational difficulties for the Carrier. However, as shown by the 1991 Implementing Agreement, the parties reached agreement on how the operations would be transferred from the field to the CSC and disputes arose under that language which were settled and/or arbitrated. The parties and those impacted by those actions must live with those results until such time as the bargaining process - and not proceedings before the Board - determines otherwise.

To say the least, this case has been vigorously and most competently argued in the Referee Hearings before the Board and in the executive sessions we have had in coming to this decision. But, for reasons discussed in detail above, the parties must now live with the results of previously negotiated Agreements, governing precedent Awards (i.e., Public Law Board No. 5782) and the facts of the individual disputes for the remaining cases before the Board and those held in abeyance. Given the electrifying leaps in technology producing better ways for the Carrier to run its railroad, the future will inevitably bring more jurisdictional disagreements as the parties operate under conditions that were effectively established beginning in 1991 - for all purposes a point in ancient history in the computerized age. We believe that the parties should therefore take particular heed of the Supreme Court's observation concerning the Board made in Transportation - Communication Employees Union v. Union Pacific Railroad Co., supra, 356 U.S. at 165 and apply it to their relationships and ". . . with [their] experience and common sense, handle this entire dispute in a satisfactory manner in a single proceeding" - i.e., together at the bargaining table.

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 27th day of October 2004.

CARRIER MEMBERS' DISSENT

TO

THIRD DIVISION AWARDS 37227 - 37236

DOCKETS CL-37035; CL-37046; CL-37053; CL-37054;
CL-37058; CL-37075; CL-37083; CL-37087; CL-37093; CL-37111

(Referee Edwin H. Benn)

The instant Third Division Award 37227 and companion Awards dealt with the issue of the performance of various computer functions such as adjusting yard inventory, reporting bad order freight cars and issuing work orders at field locations by Yardmasters and Clerks.

The clerical field computer input work was coordinated into the Customer Service Center located in Jacksonville, Florida, beginning in 1991 via what is commonly known as the "Visions Agreement." Because this coordination involved work from various former railroads that are now part of CSXT, that Agreement was an Implementing Agreement reached pursuant to, and in satisfaction of, the New York Dock employee protective conditions of the Interstate Commerce Commission, now the Surface Transportation Board.

The claims were filed for occasions when computer functions were performed at field locations after the coordination. The Board found that the Customer Service Center Clerks were aggrieved when Yardmasters and Clerks in the field performed various computer functions.

A reading of the Board's Award makes clear that an interpretation of the 1991 New York Dock Implementing Agreement was at the heart of the dispute between the Carrier and TCU. It is well settled that the Board lacks subject matter jurisdiction over disputes involving New York Dock implementing agreements. See, e.g., Third Division Awards 29317, 29660, 35360, and 37138. Disputes requiring the interpretation or application of a New York Dock implementing agreement must be handled in accordance with the exclusive arbitration procedures set forth in New York Dock.

Although the participants did not raise this threshold jurisdictional issue, the Board's subject matter jurisdiction cannot be enlarged through a mistake of the parties. Even when the parties do not raise the issue, the Board can do so itself. Because the Board lacked subject matter jurisdiction in this case, it exceeded its jurisdiction as defined in the Railway Labor Act, 45 U.S.C. § 153, First, and Awards 37227 - 37236 should be considered null and void and without any precedential effect for this reason alone.

In addition, the Board missed or chose to ignore a basic issue in this case. This computer work was performed by Yardmasters, Clerks and other employees prior to the consolidation of the clerical customer service work into the Customer Service Center in Jacksonville. The Carrier's New York Dock notice to TCU of its intent to coordinate and consolidate the clerical customer service work into Jacksonville was to do only that -- consolidate the work performed by Clerks. The notice did not propose to transfer the work of Yardmasters. It is important to note that the UTU-Yardmasters Department was not named in the New York Dock notice served on TCU and was not a party to the 1991 Implementing Agreement. The implementing agreement procedures of New York Dock, Article I, Section 4, require that the UTU-Yardmasters Department be a party to an implementing agreement that purported to coordinate work performed by Yardmasters and transfer it to another craft's Collective Bargaining Agreement. The record shows that the UTU-Yardmasters Department was not a party to the 1991 Implementing Agreement. Accordingly, neither the Carrier nor TCU had the right or authority under the 1991 Implementing Agreement to transfer work performed by Yardmasters to Jacksonville in order to give it to Clerks. With a swipe of the proverbial pen, the Board has taken work "shared" between at least two crafts at field locations prior to 1991 and given it exclusively to a single craft.

The Award's crafted language cannot circumvent this issue, nor justify the conclusion that Yardmasters can no longer perform work they had done in the past. The Award is based upon an erroneous analysis of the facts of the case, contrary to the requirements of the New York Dock conditions, and no amount of rationalization can support removal of existing work from the Yardmaster craft. Most importantly, these Awards exceed the jurisdiction of the Board.

We dissent.

Michael C. Lesnik

Martin W. Fingerhut

Bjarne R. Henderson

John P. Lange