Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37229
Docket No. CL-37053
04-3-02-3-17

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(01-0079) TCU File 1.2550(18)SCL

1. Carrier violated the Agreement(s) on August 8, 13 and 20, 2000, when it allowed Foremen/Train Directors to make Yard Inventory (YSBO) on train/track/cut at Louisville, Kentucky. This violation was performed in lieu of allowing this work to be performed by the 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 time and one-half at the applicable rate of $147.14 or the punitive rate, 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.

In this claim, the Organization protests that someone other than a Customer Service Representative (CSR) at the Customer Service Center (CSC) in Jacksonville, Florida, performed the computer function YSBO. The specific dispute in this claim arose at Louisville, Kentucky.

In Third Division Award 37227 we discussed at length the history and Awards concerning the establishment and transfer of Clerks' work from the field to the CSC in Jacksonville. The analysis examined the specific work and location in dispute, both before and after the establishment of the CSC. In that Award, we held:

> "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."

Under those standards, this claim has merit.

Someone other than a CSR at the CSC performed the YSBO function at Louisville. Louisville was one of the locations covered by the 1991 Implementing Agreement that transferred work from the field to the CSC. See Attachment A to that Agreement. As shown by statements provided by Clerks, the function YSBO was performed by Clerks at Louisville before the CSC was established and by CSRs after the work was transferred to the CSC. (TCIU Exhibit 24 at 58, 167, 179 and 275; Clerks Huebel, Jackson, Killian and Wright state that they performed the YSBO function at Louisville and at the CSC.) The standards discussed in Third Division Award 37227 have been shown by the Organization.

Under the rationale stated in Third Division Award 37227, this claim shall be sustained at the $15.00 requirement.

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