Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37233
Docket No. CL-37083
04-3-02-3-41

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(01-0157) TCU File 1.2578(18)SCL

1. Carrier violated the Agreement(s) on September 13, 17 and 26, 2000, when it allowed the Yardmaster (as specifically named in each claim) to adjust the Yard inventory tracks at Rocky Mount, North Carolina, in lieu of allowing Clerk R. L. Wilson to perform this work at the Customer Service Center at Jacksonville, Florida.

2. Carrier shall now be required to compensate Clerk Wilson, ID 518563, eight (8) hours at time and one-half the current rate of $147.14 for the above violation.

Carrier File 6(01-0161) TCU File 1.2590(18)SCL

1. Carrier violated the Agreement(s) on September 26, 2000 and October 2 (2) and 20, 2000, when it allowed Yardmasters (as specifically named in each claim) to make Yard Inventory Adjustments (YSIA) on train/track/cut at Rocky Mount, North Carolina. 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 less any compensation paid.

Carrier File 6(01-0243) TCU File 1.2603(18)SCL

1. Carrier violated the Agreement(s) on November 2, 2000, when it allowed Yardmaster B. A. Jackson to make Yard Inventory Adjustments (YSIA) on train/track/cut at Rocky Mount, North Carolina. 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."

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 these claims, the Organization protests that someone other than a Customer Service Representative (CSR) at the Customer Service Center (CSC) in Jacksonville, Florida, performed adjustments to the yard inventory at Rocky Mount, North Carolina.

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."

This dispute is different.

In Third Division Award 37227, we also discussed the December 1, 1994 Agreement which 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."

As shown by the designated "x" in the box for "Yard Invtry" in the December 1, 1994 Agreement, the parties specifically resolved the dispute concerning adjustments to yard inventory at Rocky Mount. In that Agreement, the Carrier states that it ". . . 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. . . ." Thus, arguments that the Organization somehow gave up this work notwithstanding (which we do not find persuasive) the December 1, 1994 Agreement clearly resolved this dispute with the Carrier's acknowledgement that the disputed yard inventory work at Rocky Mount belonged to Clerks. We, therefore, need go no further and find that the Carrier violated the December 1, 1994 Agreement and, therefore, also violated the Amended Scope Rule when someone other than a CSR at the CSC performed this work at Rocky Mount.

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