

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37345
Docket No. CL-37680
05-3-03-3-123

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin 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-12968)
that:

- (1) Carrier violated the Agreement specifically Rule 1, and the Customer Service Center Agreement, on February 22, 2002, when it allowed Manager Customer Operations Danny Murphy, located at Jacksonville, Florida, to order twenty-eight (28) cars for customer Jefferson Smurfit Corp., located at Brewton, Alabama, using the Equipment order menu on the computer. This was allowed in lieu of allowing this work to be performed by the Clerical employees in the Customer Service Center at Jacksonville, Florida.
- (2) Carrier shall now be required to compensate the Senior Available Employee, S. W. Brazier, Id. No. 145633, eight (8) hours at time and one-half at the applicable rate of \$150.98, or his guarantee rate, whichever is higher, 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.

The basic facts outlined in the Statement of Claim are not in dispute. The Claimant originally placed the order of 70 cars for the customer. During a subsequent conversation between the Manager Customer Operations and the customer, it was learned that only 28 cars were needed. The Manager Customer Operations entered the computer system and adjusted the car order downward accordingly. A printout of the computer screen showing the Manager Customer Operations' adjustment was attached to the claim.

The claim also recounted the historical transfer of clerical work from field locations such as Brewton, Alabama, for consolidated performance by the clerical craft at the Carrier's then Customer Service Center at Jacksonville, Florida. The claim also recited the applicable portions of the positions or work Scope Rule that applied to the Customer Service Center. None of these assertions were effectively refuted on the property.

The Carrier essentially rejected this claim on two grounds: First, that the work performed by the Manager Customer Operations was incidental or de minimus and, second, that the claim was excessive because his involvement was limited to one or two minutes at most.

Both parties cited prior Awards in support of their positions. We find the series of eight recent Awards to be the most relevant to the instant dispute. Third Division Award 37227, adopted on October 27, 2004, is the lead Award of the group. It provides a detailed history of the Carrier's transfer of clerical work for consolidated performance at the Jacksonville Customer Service Center by scope-covered employees. The Award followed the reasoning expressed in Public Law Board No. 5782, Award 1, which was issued in February 1997. The thrust of these Awards is that clerical work that was transferred into the Customer Service Center for consolidated performance may not be performed by outsiders to the Agreement.

The Awards also established a \$15.00 per incident remedy for such scope violations. To foster the objective of stability those Awards sought to achieve, we endorse their findings.

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

The Awards cited by the Carrier do not alter this finding. The facts involved in Third Division Award 29612 showed a compelling need for the Manager to perform the disputed work because he was faced with inconveniencing a customer who was physically present and waiting for service. It is noted that Award 29612 was confined to those limited circumstances. The record here does not establish a similar situation. Moreover, the Manager Customer Operations' work here was not error correction as in Award 8 of Public Law Board No. 5782, nor was it done in response to a request for aid from a clerical employee as in Award 18, nor the incidental and tangential task of replenishing paper in a printer as in Award 39 of that same Board.

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 19th day of January 2005.