

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37640
Docket No. CL-37359
05-3-02-3-385

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Consolidated Rail Corporation)

STATEMENT OF CLAIM:

**"Claim of the System Committee of the Brotherhood (GL-12904)
that:**

- (a) The Carrier violated the Clerks' Rules Agreement effective July 1, 1979, particularly Rules 1, 5, 24, 40 & other rules when it permitted, required allowed and assigned TCU covered agreement duties to DiPiero Court Reporting, an outside non TCU covered Agency that is located at 404 South 16th Street, Phila., PA 19146.**
- (b) On February 28, 2001, Alva I. Castro an employee of DiPiero Court Reporting took dictation for the investigation of TCU clerical employee, D.B. Miles at the Radisson Hotel, Conference Room 412, Route 73 and 295, Mount Laurel NJ. Additionally the DiPiero Agency also transcribed the dictation, produced typed copies etc. of this investigation and mailed such to Conrail after the investigation.**
- (c) Claimant B. M. Benson should now be allowed (3) hours pay at the punitive rate of her position on her EMR, whichever is higher, for February 28, 2001, the date of the investigation for the time spent at the investigation plus travel time. Also please allow an additional eight (8) hours at the punitive rate of her position or her EMR, whichever is higher, on February 28,**

2001 for the time it took DiPiero Court Reporting after the investigation to transcribe the dictation, produce typed copies etc., mail the transcript of this investigation to Conrail.

- (d) Claimant B. M. Benson is qualified, was available and should have been called and assigned to perform this work.
- (e) This claim has been presented in accordance with Rule 45, is in order & should 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.

The claim in this case was filed on or about April 20, 2001. In its denial of the claim, dated May 8, 2001, the Carrier noted that the Investigations at issue were held at an off-property site and contended that it was not obligated to use TCU-represented employees for stenographic duties at an off-property site. During the subsequent processing of the claim, the Carrier also maintained that it had used reporting services for off-property Investigations since before 1992.

After a thorough review of the record before the Board, we do not find that the Organization presented evidence to contradict the Carrier's assertions regarding off-property Investigations. Accordingly, the Organization failed to meet its burden of persuasion in this matter.

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AWARD

Claim denied.

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 19th day of October 2005.