

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37679
Docket No. CL-37245
06-3-02-3-305

The Third Division consisted of the regular members and in addition Referee James E. Conway 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 Brotherhood (GL-12883)
that:

CLAIM NO. 1

1. The CSX Transportation violated the Agreement(s), as outlined in Attachment (A) of this claim, beginning on dates from January 13 through February 27, 2001, after it had abolished all clean-out track positions at Waycross, Georgia and subsequently allowed members not covered under the TCU Clerical Agreement to perform the duties of cleaning cars at Waycross, Georgia, which is a duty and function historically assigned to and performed by the Clerks at Waycross, Georgia.
2. Because of the aforementioned violation(s), the Carrier shall now be required to return the cleaning of the cars to the Clerical craft at Waycross, Georgia, and compensate the Senior Available Employee(s), Guaranteed Extra Board or unassigned in preference, eight (8) hours at the applicable rate, be it overtime or straight time, for each date that the Carrier allowed the non-covered employees to clean cars, as outlined in Attachment ‘A’ of this claim. A perusal of the Carrier’s records shall determine the ‘available’ employees outlined in the claim.

CLAIM NO. 2

1. The CSX Transportation violated the Agreement(s), as outlined in Attachment (A) of this claim, beginning on dates from March 1 through April 9, 2001, after it had abolished all clean-out track positions at Waycross, Georgia, and subsequently allowed members not covered under the TCU Clerical Agreement to perform the duties of cleaning cars at Waycross, Georgia, which is a duty and function historically assigned to and performed by the Clerks at Waycross, Georgia.
2. Because of the aforementioned violation(s), the Carrier shall now be required to return the cleaning of the cars to the Clerical craft at Waycross, Georgia, and compensate the Senior Available Employee(s), Guaranteed Extra Board or unassigned in preference, eight (8) hours at the applicable rate, be it overtime or straight time, for each date that the Carrier allowed the non-covered employees to clean cars, as outlined in Attachment 'A' of this claim. A perusal of the Carrier's records shall determine the 'available' employees outlined in the claim."

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 Brotherhood Railway Carmen Division of TCU was advised of the pendency of this dispute, but chose not to file a Submission with the Board.

The claims at issue here, although processed separately on the property, are identical except for the claim dates and have been consolidated for purposes of disposition by the Board.

With respect to "Claim No. 1," the record indicates that the Carrier abolished five of nine Car Cleaning positions in the Mechanical Department at Waycross, Georgia, effective April 7, 2000 and assigned the duties of the incumbents to Carmen not covered by the Agreement. That action was questioned by the District Chairman, but no reply to his written inquiry was received. On March 5, 2001, this claim was submitted taking exception to the Carrier's action, requesting that car cleaning be returned to covered personnel and demanding reimbursement for the loss of interim earnings.

"Claim No. 2" is an extension of "Claim No. 1." Filed April 21, 2001, it protests the January 12, 2001 abolishment of the four remaining cleaner positions and assignment of their duties in similar fashion to Carmen.

On May 1, 2001, local management responded to both claims offering three hours of straight time pay for each date claimed providing the Organization would identify the Claimants entitled to the payments. That offer was rejected and the claim was conferenced. Thereafter the parties conversed extensively in writing concerning the adequacy of the Carrier's settlement offer, the sufficiency of evidence supporting the claim, whether the Organization had identified any Claimant suffering actual loss and related issues.¹

There appears to be no dispute concerning the basis for the claims in dispute, at least until settlement of the matter bogged down over the question of how much the Carrier was prepared to pay to dispose of them. It further appears that at the local level W. D. Smith, II, Regional Director Administration Southern Region, was prepared to award three hours of pay for all dates listed provided the Organization identified the proper Claimants.

¹ The Organization's summary of those exchanges, excluding voluminous attachments, comprises 43 pages.

There was an irreconcilable fact dispute on the property. The Organization says substantial cleaning was performed. The Carrier says that because the cars were nearly totally destroyed, minimal work was done by Carmen. Much of the evidence was in substantial conflict and indecipherable. Accordingly, we direct the Carrier to pay three hours as local management offered on the property with the Organization to identify the proper Claimants.

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 30th day of January 2006.