Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37749
Docket No. CL-37724
06-3-03-3-155

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
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(CSX Transportation, Inc.

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-12977) that:

I. Claim of the System Committee of the TCU (CN2/0235) that:

(1) Carrier violated the terms of the Clerical Agreement, particularly Rule 1 – Scope, as well as other applicable rules when on January 1, 2002 it abolished the position of Yard Clerk 4105-101 Luke, MD., hours of assignment 6:00 A.M. to 2:00 P.M., Monday through Friday (rest days Saturday and Sunday) and transferred its duties and responsibilities to Customer Service Center, at Jacksonville, FL a position not coming under the Scope of the Collective Bargaining Agreement.

(2) As a result of this improper transfer of work and abolishment of position, the Carrier will be required to compensate the incumbent of Position 4105-101, Claimant T. H. Delauder, ID No. 1502147, 8 hours per day, Monday through Friday, at the pro rata rate, commencing on the date his assignment was abolished, (January 1, 2002) and continuing until the violation is corrected, the work returned and the Claimant's position re-established.

(3) Carrier will further be required to compensate Claimant T. H. Delauder, under the provisions of Rule 64 – Diversion of the CBA, for all time worked outside of the hours of his previous assignment of Yard Clerk which was improperly abolished on January 1, 2002, until such time as the assignment is re-established and the claimant is returned as the incumbent.

II. Claim of the System Committee of the TCU (CN02/0236) that:

(1) Carrier violated the terms of the Clerical Agreement, particularly Rule 1 – Scope, as well as other applicable rules when on January 1, 2002 it abolished the position of Yard Clerk 4105-101 Luke, MD., hours of assignment 4:00 P.M. to 12:00 A.M., Thursday through Monday (Rest days Tuesday and Wednesday) and transferred its duties and responsibilities to Customer Service Center, at Jacksonville, FL., a position not coming under the Scope of the Collective Bargaining Agreement.

(2) As a result of this improper transfer of work and abolishment of position, the Carrier will be required to compensate the incumbent of Position 4105-101, Claimant V. H. Johnson, ID No. 1502229, 8 hours per day, Thursday through Monday, at the pro rata rate, commencing on the date his assignment was abolished, (January 1, 2002) and continuing until the violation is corrected, the work returned and the Claimant's position re-established.

(3) Carrier will further be required to compensate Claimant V. W. Johnson, under the provisions of Rule 64 – Diversion of the CBA, for all time worked outside of the hours of his previous assignment of Yard Clerk which was improperly abolished on January 1, 2002, until such time as the assignment is re-established and the claimant is returned as the incumbent."

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 matter in dispute centers on the Carrier's November 8, 2001 notice to the Organization of its intent to abolish two Yard Clerk positions at Luke, Maryland, and combine that work with that performed by other Clerks in the Carrier's Customer Operations Center at Jacksonville, Florida. The two Yard Clerk positions at Luke that had performed the transferred work were abolished on January 1, 2002.

While the critical facts are not disputed, the parties hold materially different views concerning which of the processes set forth in several of their understandings should govern analysis of their rights and remedies in the instant case.

The Carrier argues that its notice of transfer and consolidation was proper and consistent with both Agreement Rule 1 – Scope, the C&O Job Stabilization Agreement effective June 1, 1999, and its past practice in handling analogous situations.

The Organization asserts that there is no authority under the Agreement to remove work from one Agreement and transfer it to incumbents covered by another. It maintains that, "[a]ny transfer of this type where two (2) railroads as well as two (2) separate Collective Bargaining Agreements are involved, have always required the transaction to be handled via a New York [Dock] Notice." It contends that the Carrier's position conflicts with both past arbitral precedent on the

property and is inconsistent with the arguments it made before the Surface Transportation Board in filings for the acquisition of Conrail.

Understanding the parties' respective positions requires brief reference to historical background. The record shows that CSX Transportation, Inc., achieved its mass as one of the nation's largest freight railroads in part through consolidation with various other lines, including the Seaboard Coast Line Railroad Company, the Louisville and Nashville Railroad Company, the Chesapeake and Ohio Railway Company, the Baltimore and Ohio Railroad Company and other Carriers. More recently, it and Norfolk Southern Corporation received authorization from the Surface Transportation Board (STB) to acquire and divide between them portions of Consolidated Rail Corporation.

In connection with the Conrail acquisition, CSXT, Norfolk Southern, Conrail and the Organization entered into an "Implementing Agreement" dated November 2, 1998 (effective June 1, 1999) amending the Carrier's July 1, 1980, "C&O Job Stabilization Agreement" (itself an amended version of the "Job Protection Agreement of February 7, 1965") to address labor issues raised by the integration and control of portions of Conrail's operations.

The Carrier asserts that in serving its notice on November 8, 2001, it acted in accordance with Articles III and VII of the modified C&O Job Stabilization Agreement and in keeping with its past practice in handling such situations, and that its notice so advised the Organization. By letter of declination dated October 22, 2002, it amplified on that position in part as follows:

> ". . . you contend that the Agreement (Master Implementing Agreement) signed July 31, 2002, 'should be applied to these cases. . . .' The parties agreed to apply the MIA Agreement retroactively to specific identified cases. The parties did not agree to apply the MIA Agreement to the Luke, Maryland work transfer.
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> . . . [the positions] were abolished and the duties thereof were properly transferred to clerical positions at Jacksonville, Florida in accordance with the terms [of] Article III of the amended Feb. 7, 1965 C&O Job Stabilization Agreement. Records further reflect

that the clerical employees involved at both locations are covered by the amended Feb. 7 Job Stabilization Agreement.

In this connection, Article VII, Section 2 of the amended Feb. 7, 1965 Job Stabilization [Agreement] provides:

Section 2

In the event of merger or consolidation of two or more carriers . . . subsequent to the date of this Agreement, the merged, surviving or *consolidated carrier will constitute a single system for the purposes* of this Agreement, and the provision hereof shall apply accordingly. . . ."

Upon due consideration of the extensive authority cited by the parties, we conclude that the Board lacks authority to decide the dispute. The Organization's claims were initially filed on behalf of the incumbents of the abolished positions alleging violation of, "Rule 1 – Scope, as well as other applicable rules. . . ." Notwithstanding, they consistently have been pled thereafter in terms of violations of New York Dock Notice provisions, maintaining that that Articles III and VII of the modified C&O Job Stabilization Agreement are inapplicable.

The Railway Labor Act, Title I, Section 3, First (i) invests the Board with jurisdiction to resolve disputes "growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions. . . ." The crucial determinants are not the words of the grievance, but the rights and remedies it invokes. Because it not clear that this dispute can be resolved solely by reference to the Agreement, it is not of the kind or character contemplated by the statute as appropriate for resolution by the Third Division. Accordingly, we find the Carrier's jurisdictional objections persuasive.

The claim will be dismissed without prejudice to the parties' right to refer it to a New York Dock tribunal for the purpose of determining whether the work transfers between the locations involved here are subject to Article VIII – Dispute Procedure of the modified C&O Job Stabilization Agreement or to Article 11-Arbitration of Disputes under New York Dock conditions. The contentions of the

parties with respect to the merits and remedies may then be considered by that Board.

AWARD

Claim dismissed.

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 21st day of March 2006.