

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37836
Docket No. CL-37040
06-3-02-3-6**

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:

“Claim of the System Committee of the Union that:

Carrier File 6(01-0153)
(TCU File 1.2574(18)SCL)

1. Carrier violated the Agreement(s) on August 23(2), and 24 and September 27 and 28(2), 2000, when it allowed the Yardmaster/Clerk (as specifically named in each claim) to adjust the Yard inventory tracks at Fairburn, Georgia, 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(01-0166)
(TCU File 1.2585(18)SCL)

1. Carrier violated the Agreement(s) on various dates, as named in each claim, when it allowed Intermodal Clerk J. L. Goodman to Yard (YSAD) train/track/cut at Mile Post

XXBO23 (Fairburn Ramp). This violation was performed in lieu of allowing this work to be performed by Clerical employees in the Customer Service Center at Jacksonville, Florida.

- 2. Carrier shall now compensate the Senior Available Employee, 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.**

(Carrier File 6(01-0170)
(TCU File 1.2580(18)SCL)

- 1. Carrier violated the Agreement(s) on September 29, 2000, when it allowed Intermodal Clerk J. H. Ingram to make Yard Inventory Adjustments (YSIA) on train/track/cut at Fairburn, Georgia. This violation was performed in lieu of allowing this work to be performed by Clerical employees in the Customer Service Center at Jacksonville, Florida.**
- 2. Carrier shall now compensate the Senior Available Employee, 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.**

(Carrier File 6(01-0348)
(TCU File 1.2618(18)SCL)

- 1. Carrier violated the Agreement(s) on November 13 and 14, 2000, when it allowed Intermodal Clerk J. L. Goodman to make Yard Inventory Adjustments (YSIA) on train/track/cut at Fairburn, Georgia. This violation was performed in lieu of allowing this work to be performed by Clerical employees in the Customer Service Center at Jacksonville, Florida.**

2. Carrier shall now compensate the Senior Available Employee, 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.

In this claim, the Organization alleges that the Carrier assigned employees at Fairburn, Georgia, to perform YSIA/YSAD functions rather than assigning that work to a Customer Service Representative ("CSR") at the Customer Service Center ("CSC") in Jacksonville, Florida.

The background for this claim is set forth in Third Division Awards 37227 and 37760.

As more fully set forth in Third Division Award 37760, the Board has jurisdiction to resolve this claim.

Under those Awards, to prevail in this case 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 Fairburn, Georgia, prior to the 1991 Implementing Agreement; and (3) was performed by a CSR at the CSC after the 1991 Implementing Agreement took effect.

This record lacks the specific required factual showings necessary for the Board to find that the Organization carried its burden under the three-part test set forth in Third Division Award 37227.

Fairburn, Georgia, is an intermodal ramp located approximately 20 miles from Atlanta and is not listed in the October 25, 1990 transfer notice. Further, the statements offered by the TCU-represented employees do not specifically demonstrate that the disputed work was performed by Clerks at Fairburn prior to the 1991 Implementing Agreement.

In light of the above, the Organization's assertions that Fairburn is part of the Atlanta Terminal (relying upon its listing on the CSX Intermodal website) or covered by the 1994 Agreement are insufficient to offset the lack of necessary evidence to meet the three-part test.

The claim shall therefore be denied.

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 1st day of August 2006.