

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37837
Docket No. CL-37060
06-3-02-3-24**

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(01-0347)
(TCU File 1.2619(18)SCL)**

- 1. Carrier violated the Agreement(s) on November 4, 5 and 8, 2001, when it allowed Clerks J. D. Coffman and/or K. E. Price to make Yard Inventory Adjustments (YSIA) on train/track/cut at Danville, Illinois. 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 Clerks at Danville, Illinois, to make yard inventory adjustments through YSIA 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 Danville, Illinois, 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. Specifically, the Organization submitted 226 statements from employees transferred from various locations to the CSC. None of

those statements assert that the disputed work was performed by those employees at Danville prior to their transfer to the CSC.

The Organization's reliance upon a January 11, 2001 letter from the Carrier stating that "[a] TCU craft member completed this work while working a clerical position at Louisville, KY" with the further argument that the work at Louisville was transferred to the CSC does not change the result. This claim is specifically about Danville and in these cases we have required the Organization to make the necessary demonstrations at the specific contested locations. See Third Division Award 37761. The Organization has not made that showing in this case for Danville.

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.

**CARRIER MEMBERS' DISSENT
TO
THIRD DIVISION AWARDS 37836, 37837, 37838, 37839, 37840
DOCKETS CL-37040, CL-37060, CL-37079, CL-37084, CL-37097**

(Referee Edwin H. Benn)

These Awards involve the performance of various computer functions, including adjusting yard inventory, at field locations by Clerks and/or Yardmasters.

Awards 37836 and 37837 denied the claims presented therein. The claims that culminated in Awards 37838, 37839 and 37840 were sustained in accordance with the Findings. Although two of the five Awards decided the involved claims in favor of the Carrier, we nevertheless dissent on the ground that the Board lacks the subject matter jurisdiction to decide any of these claims. For the sake of brevity, our Dissent to Third Division Awards 37760 through 37765 is incorporated herein by reference.

Michael C. Lesnik

Michael C. Lesnik

Martin W. Fingerhut

Martin W. Fingerhut

Bjarne R. Henderson

Bjarne R. Henderson

John P. Lange

John P. Lange

August 7, 2006