

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37838
Docket No. CL-37079
06-3-02-3-39

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(01-0064)
(TCU File 1.2533(18)SCL)

1. Carrier violated the Agreement on October 5, 2000, when it allowed Clerk D. J. Bohn to make Yard Inventory Adjustments (YSIA) on train/track/cut at location 000003 (Louisville, Kentucky). This violation was performed in lieu of allowing this work to be performed by Clerical employees in the Customer Service Center in Jacksonville, Florida.
2. Carrier shall now be required to 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(01-0069)
(TCU File 1.2528(18)SCL)

1. Carrier violated the Agreement(s) on September 26, 2000, when it allowed Clerk S. L. Vaughn to make Yard Inventory Adjustments (YSIA) on train/track/cut at C08 to ROI MP000006. 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(01-0071)
(TCU File 1.2526(18)SCL)

1. Carrier violated the Agreement(s) on October 5, 2000, when it allowed Clerk D. J. Bohn to make Yard Inventory Adjustments (YSIA) on train/track/cut at 000003. 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(01-0081)
(TCU File 1.2548(18)SCL)

1. Carrier violated the Agreement(s) on September 18 and October 2, 2000, when it allowed Clerk F. R. Nalley to make Yard Inventory Adjustments (YSIA) on train/track/cut at 000003, Louisville, Kentucky. 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(01-0150)
(TCU File 1.2571(18)SCL)

1. Carrier violated the Agreement(s) on October 11, 2000, when it allowed Clerk S. L. Vaughn to make Yard Inventory Adjustments (YSIA) on train/track/cut at Louisville, Kentucky. 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 these claims, the Organization alleges that the Carrier assigned Clerks at Louisville, Kentucky, yard inventory adjustments rather than assigning that work to a Customer Service Representative ("CSR") at the Customer Service Center ("CSC") in Jacksonville, Florida. The record reveals that the specific computer function involved for the disputed work is YSIA.

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.

The record in this case shows that the disputed work: (1) was performed by someone other than a CSR at the CSC; (2) was performed by a Clerk at Louisville, Kentucky, prior to the 1991 Implementing Agreement; and (3) was performed by a CSR at the CSC after the 1991 Implementing Agreement took effect. Under the three-part test set forth in Third Division Award 37227, the Organization has shown that the work was transferred from Louisville to the CSC under the terms of the 1991 Implementing Agreement and was later improperly performed by someone other than a CSR at the CSC in violation of the parties' Collective Bargaining Agreements. See Third Division Awards 37234, 37229, 37781 and 37839 involving similar disputes at Louisville.

With respect to the number of transactions allowed for the remedy, see Third Division Award 37781:

"There is a dispute over the number of transactions that occurred. The Carrier asserts that the claims are duplicative and that there are only five transactions. The Organization asserts that there are 28. Examination of the event listings in the record show that the Organization is correct and that multiple transactions occurred on the same dates."

Under the rationale stated in Third Division Award 37227, these claims shall be sustained at the \$15.00 requirement.

AWARD

Claim sustained in accordance with the Findings.

Form 1
Page 5

Award No. 37838
Docket No. CL-37079
06-3-02-3-39

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 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