

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37840
Docket No. CL-37097
06-3-02-3-54

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(01-0122)
(TCU File 1.2556(18)SCL)

1. Carrier violated the Agreement on the dates noted in each claim, when it allowed the on-duty Yardmasters (as specifically named in each claim) at Corbin, Kentucky, to complete switchlists resulting in the adjustment of the Yard inventory at Corbin, Kentucky. This was done in lieu of allowing Clerk H. F. Cole to perform this work at the Customer Service Center at Jacksonville, Florida.
2. Carrier shall now be required to compensate Clerk Cole, ID 182234, eight (8) hours' pay at time and one-half his current rate of \$147.14 for the above violation.
3. Carrier shall also be required to make available their records to verify this violation.

**(Carrier File 6(01-0341)
(TCU File 1.2625(18)SCL)**

- 1. Carrier violated the Agreement on October 5, 6, 7, 14 and 17, 2000, when it allowed the on-duty Yardmaster at Corbin, Kentucky, to complete the switchlists, as noted in each claim, resulting in the adjustment of the Yard inventory at Corbin, Kentucky. This was done in lieu of allowing Clerk L. D. Lynn to perform this work at the Customer Service Center at Jacksonville, Florida.**
- 2. Carrier shall now be required to compensate Clerk Lynn, ID 239361, eight (8) hours at time and one-half her current rate of \$134.19, plus any additional wage or daily increases, for the above violation.**
- 3. Carrier shall also be required to make available its records to verify this violation.**

**(Carrier File 6(01-0342)
(TCU File 1.2624(18)SCL)**

- 1. Carrier violated the Agreement on October 6, 8, 11, 17, 20, 21, 23, 25, 28 and 29, 2000, when it allowed the on-duty Yardmaster at Corbin, Kentucky, to complete the switchlists, as noted in each claim, resulting in the adjustment of the Yard inventory at Corbin, Kentucky. This was done in lieu of allowing Clerk H. F. Cole to perform this work at the Customer Service Center at Jacksonville, Florida.**
- 2. Carrier shall now be required to compensate Clerk Cole, ID 182234, eight (8) hours at time and one-half his current rate of \$147.14, plus any additional wage or daily increases, for the above violation.**
- 3. Carrier shall also be required to make available its records to verify this violation.**

(Carrier File 6(01-0343)
(TCU File 1.2623(18)SCL)

1. Carrier violated the Agreement on various dates, as noted in each claim, when it allowed the on-duty Yardmaster at Corbin, Kentucky, to complete Switchlists, as specifically noted in each claim. This was done in lieu of allowing Clerk L. D. Lynn to perform this work at the Customer Service Center at Jacksonville, Florida.
2. Carrier shall now be required to compensate Clerk Lynn, ID 239361, eight (8) hours at time and one-half her current rate of \$134.19, plus any additional wage or daily increases, for the above violation.
3. Carrier shall also be required to make available its records to verify this violation.

(Carrier File 6(01-0338)
(TCU File 1.2628(18)SCL)

1. Carrier violated the Agreement on various dates, as noted in each claim, when it allowed the on-duty Yardmaster at Corbin, Kentucky, to complete the switchlists, as noted in each claim, resulting in the adjustment of the Yard inventory at Corbin, Kentucky. This was done in lieu of allowing Clerk P. V. Wilson to perform this work at the Customer Service Center at Jacksonville, Florida.
2. Carrier shall now be required to compensate Clerk Wilson, ID 521506, eight (8) hours at time and one-half her current rate of \$147.14, plus any additional wage or daily increases, for the above violation.
3. Carrier shall also be required to make available its records to verify this violation.

**(Carrier File 6(01-0339)
(TCU File 1.2627(18)SCL)**

- 1. Carrier violated the Agreement on October 3, 4, 5, 7 and 8, 2000, when it allowed the on-duty Yardmaster at Corbin, Kentucky, to complete the switchlists, as noted in each claim, resulting in the adjustment of the Yard inventory at Corbin, Kentucky. This was done in lieu of allowing Clerk P. V. Wilson to perform this work at the Customer Service Center at Jacksonville, Florida.**
- 2. Carrier shall now be required to compensate Clerk Wilson, ID 521506, eight (8) hours at time and one-half her current rate of \$147.14, plus any additional wage or daily increases, for the above violation.**
- 3. Carrier shall also be required to make available its records to verify this violation.**

**(Carrier File 6(01-0340)
(TCU File 1.2626(18)SCL)**

- 1. Carrier violated the Agreement on November 2, 3 and 4, 2001, when it allowed the on-duty Yardmaster at Corbin, Kentucky, to complete the switchlists, as noted in each claim, resulting in the adjustment of the Yard inventory at Corbin, Kentucky. This was done in lieu of allowing Clerk H. F. Cole to perform this work at the Customer Service Center at Jacksonville, Florida.**
- 2. Carrier shall now be required to compensate Clerk Cole, ID 182234, eight (8) hours at time and one-half his current rate of \$147.14, plus any additional wage or daily increases, for the above violation.**
- 3. Carrier shall also be required to make available its records to verify this 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.

As Third Party in Interest, the United Transportation Union - Yardmasters Department (UTU) was advised of the pendency of this dispute and chose to file a Submission with the Board.

Aside from the Labor and Carrier representatives from the Board, also present at the Referee Hearing in this matter were representatives of the Organization, the Carrier and the UTU. As a result, extensive presentations by the Organization, the Carrier and the UTU were made to the Board.

In these claims, the Organization alleges that the Carrier assigned Yardmasters at Corbin, Kentucky, to complete switch lists 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.

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 Corbin, 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 Corbin 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.

The record in this case sufficiently shows that the disputed work was performed at Corbin. We make mention of that because of other disputes concerning work performed at Patio, Kentucky, which the Organization has argued is work that is really performed at Corbin. See Third Division Award 37761 where we denied the Organization's claims because the evidence in that case did not show that the work was performed at Patio:

"The Organization's argument that the work was actually performed at Corbin, Kentucky, does not change the result. The three-part test in Third Division Award 37227 requires that the Organization make the appropriate showings at Patio. The Organization has not done so."

See also, Third Division Award 37836 where the Organization was also unable to demonstrate that the claimed work was improperly performed at the specific location in dispute:

"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.”

While the Organization did not meet its burden in the above prior Awards - particularly Third Division Award 37761 involving Patio and Corbin - in this case, we are satisfied that the necessary showings have been made for Corbin.

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.

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