

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37941
Docket No. CL-37090
06-3-02-3-56**

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 Company)**
PARTIES TO DISPUTE: (
(Transportation Communications International Union

STATEMENT OF CLAIM:

**“(Carrier File 6(01-0125)
(TCU File 1.2565(18)SCL)**

- 1. Carrier violated the Agreement(s) on October 12, 2000, when it allowed Yardmaster J. F. Henderson, to make Yard Inventory Adjustments (YSIA) on train/track/cut at New Castle, Pennsylvania. 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 less any compensation paid.**

**(Carrier File 6(01-0126)
(TCU File 1.2566(18)SCL)**

- 1. Carrier violated the Agreement(s) on October 10, 2000, when it allowed Yardmaster J. F. Henderson, to make Yard Inventory Adjustments (YSIA) on train/track/cut at New Castle, Pennsylvania. 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 less any compensation paid."

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.

In these claims, the Organization alleges that the Carrier assigned a Yardmaster at New Castle, Pennsylvania, to perform the YSIA function to make yard inventory adjustments 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.

In order to prevail in this case and under the three-part test set forth in Third Division Award 37227, the Organization must demonstrate that the disputed work: (1) was performed by someone other than a CSR at the CSC; (2) was performed by a Clerk at New Castle, Pennsylvania, prior to the 1991 Implementing Agreement; and (3)

was performed by a CSR at the CSC after the 1991 Implementing Agreement took effect. There is no evidence in this record to support that needed showing for the Organization to meet the three-part test. There are no statements from employees that such work was performed at New Castle before and after the crucial dates.

The specific evidence relied upon by the Organization consists of a letter dated December 7, 2000 from the Carrier stating that “. . . [p]rior to this claim the Yardmaster or field clerk would fax the data to CSC for input. The new technology allows the Yardmaster or field clerk access directly to the data.” That is not enough to meet the Organization’s burden under the three-part test. While inferences can be drawn from the submitted letter, without more detail concerning the dates and specifics of the work performed at New Castle such as we have seen in the other cases, we are unable to satisfactorily conclude in this case that the Organization met its burden under the three-part test. The claim will 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 19th day of September 2006.

**CARRIER MEMBERS' DISSENT
TO**

**THIRD DIVISION AWARDS 37929, 37930, 37931, 37932, 37933
37934, 37935, 37936, 37937, 37938, 38939, 37940, 37941, 37942**

**DOCKETS CL-37037, CL-37039, CL-37044, CL-37049, CL-37051
CL-37056, CL-37057, CL-37061, CL-37064, CL-37071, CL-37072, CL-37077,
CL-37090, CL-37094**

(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 37932, 37935, 37938 and 37941 denied the claims presented therein. The claims that culminated in Awards 37929, 37930, 37931, 37933, 37934, 37936, 37937, 37939, 37940, and 37942 were sustained in accordance with the Findings. Although four of the 14 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

September 19, 2006