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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37969
Docket No. CL-37786
06-3-03-3-91**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(CSX Transportation, Inc.)

STATEMENT OF CLAIM:

**"Claim of the System Committee of the Organization (GL-12984)
that:**

- I. The following claim is hereby presented to the company in behalf of Claimants F. E. Hiltibrand, K. M. Day, C. E. Johnson and C. J. Brewer.**
 - (a) The Carrier violated the CSXT/N Rules Agreement effective July 1, 1999, particularly Rule 1 - Scope, as well as other applicable rules, when on March 27, 2002, Carrier abolished Yard Clerk/Trim Tower Positions at Cincinnati Queensgate Yard, 4L14-130, 230, 330 and both relief jobs associated with these positions, 4L14-R23 & 4L14-R22 (Mokas-submitted on another claim) transferred a part of the duties and responsibilities to Customer Service Center (SCL Collective Bargaining Agreement) at Jacksonville, FL, a position/s not coming under the Scope of this Collective Bargaining Agreement. Also, Carrier assigned the majority of residual duties to members of the Train and Engine employees, Yardmasters, with a few duties assigned to the Clerical Craft at Queensgate Yard, in direct violation of the Scope Rule.**
 - (b) As a result of this important (sic) transfer of work and the abolishment of positions, as well as the assigning of Clerical**

Duties to other Craft Employees at Queensgate Yard, the Carrier will be required to compensate each incumbent of Positions 4L14-130 F. E. Hiltibrand, 4L14-230 K. M. Day, 4L14-330, C. E. Johnson & 4L14-R23 C. J. Brewer (which never appeared on transfer Notice), eight (8) hours per day forty (40) hours per week (using the hours and rest days of the positions abolished), at the pro rata rate, commencing on the date each position was abolished (March 27, 2002) and continue until the violation is corrected, the work returned from Jacksonville and other Craft Employees at Queensgate, and the Claimants' positions re-established.

- (c) Carrier will further be required to compensate Claimants, under the provisions of Rule 64 - Diversion of the CBA, for all time worked outside of the hours of their previous assignment of yard Clerk/Trim Tower which were improperly abolished on March 27, 2002 until such time as the assignment is re-established and the Claimants returned as the incumbents.

II. The following claim is hereby presented to the company in behalf of Claimant N. Mokas.

- (a) The Carrier violated the CSXT/N Rules Agreement effective June 1, 1999, particularly Rule 1 - Scope, as well as other applicable rules, when on March 27, 2002, Carrier abolished Yard Clerk/Trim Tower Positions at Cincinnati Queensgate Yard 4L14-130, 230, 330 and both relief jobs associated with these positions, 4L14-R23 (130, 230, 330 & R23 submitted to another Supervisor) & 4L14-R22 and transferred part of the duties and responsibilities to Customer Service Center (SCL Collective Bargaining Agreement), at Jacksonville, FL, a position/s not coming under the Scope of the Collective Bargaining Agreement. Also, Carrier assigned the majority of residual duties to members of the Train and Engine employees, Yardmasters, with a few duties assigned to the Clerical Craft at Queensgate Yard, in direct violation of the Scope Rule.

- (b) As a result of this improper transfer of work and the abolishment of positions, as well as the assigning of Clerical Duties to other Craft Employees at Queensgate Yard, the Carrier will be required to compensate incumbent of Position 4L14-R22 N. Mokas, eight (8) hours per day thirty (32) hours per week (position worked 4 trim shifts per week) at the pro rata rate, commencing on the date position was abolished (March 27, 2002) and continue until the violation is corrected, the work returned from Jacksonville and other Craft Employees at Queensgate, and the Claimant's position re-established.
- (c) The Carrier will further be required to compensate Claimant, under the provisions of Rule 64 - Diversion of the CBA, for all time worked outside of the hours of his previous assignment of yard Clerk/Trim Tower (relief) which was improperly abolished on March 27, 2002, until such time as the assignment is re-established and the Claimant returned as the incumbent."

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.

This dispute arose after the Carrier abolished certain Clerical positions governed by the CSXT-NORTH Rules Agreement at its Cincinnati, Ohio, Queensgate Yard. Prior to the abolishment of those positions, the Carrier served notice dated January 22, 2002 under the modified C&O Job Stabilization Agreement and then transferred certain clerical functions previously performed by the abolished positions from Cincinnati to the Customer Service Center ("CSC") in Jacksonville, Florida. Those transferred functions from Cincinnati were combined with clerical functions at the CSC and were performed by Clerks under the SCL Agreement governing the CSC employees. Remaining duties of the abolished positions at Cincinnati not transferred to the CSC were assigned to Clerks or Train and Engine employees and Yardmasters at Cincinnati.

The Organization argues that the Carrier cannot transfer work covered by the CSXT-NORTH Rules Agreement governing employees at Cincinnati to employees governed by the SCL Agreement at the CSC in Jacksonville.

Aside from disputing the Organization's position on the merits, the Carrier raises a threshold issue asserting that the Board lacks jurisdiction to decide this dispute.

A similar dispute was recently decided by the Board in Third Division Award 37749. In that case, two Yard Clerk positions at Luke, Maryland, were abolished and the work was transferred to the CSC and combined with work performed by Clerks at that location. The Carrier raised the question of whether the Board had jurisdiction over the dispute. The Board dismissed the claim, without prejudice, reasoning as follows:

"The Railway Labor Act, Title I, Section 3, First (i) invests the Board with jurisdiction to resolve disputes 'growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions. . . .' The crucial determinants are not the words of the grievance, but the rights and remedies it invokes. Because it [is] not clear that this dispute can be resolved solely by reference to the Agreement, it is not of the kind or character contemplated by the statute as

appropriate for resolution by the Third Division. Accordingly, we find the Carrier's jurisdictional objections persuasive.

The claim will be dismissed without prejudice to the parties' right to refer it to a New York Dock tribunal for the purpose of determining whether the work transfers between the locations involved here are subject to Article VIII - Dispute Procedure of the modified C&O Job Stabilization Agreement or to Article 11-Arbitration of Disputes under New York Dock conditions. The contentions of the parties with respect to the merits and remedies may then be considered by that Board."

The Carrier's jurisdictional argument in this case raises the same concerns expressed by the Board in Third Division Award 37749. For purposes of stability and so that these similar disputes can be treated in the same manner, we shall follow Third Division Award 37749, with the dismissal following the same conditions.

There is a distinction between this matter and Third Division Award 37749 in that this dispute also concerns the transfer of certain duties previously performed by the abolished positions at Cincinnati that were not transferred to the CSC but were assigned to Clerks or Train and Engine service employees and Yardmasters at Cincinnati. The dispute in Third Division Award 37749 did not concern such residual work that was not transferred to the CSC. Given the nature of the dismissal of the claim in this matter - i.e., without prejudice - at this time it would be inappropriate for the Board to pass upon the validity of the transfer of those other duties from the abolished positions to employees at Cincinnati. That portion of the dispute should first await the initial determination of a New York Dock tribunal for the purpose of determining whether the work transfers between the locations involved here are subject to Article VIII - Dispute Procedure of the modified C&O Job Stabilization Agreement or to Article 11-Arbitration of Disputes under New York Dock conditions. If jurisdiction is not asserted by such a Board, if asked, then this Board will pass upon the entire dispute. If jurisdiction is asserted by such a Board, if asked, this Board can then determine what is left of the dispute - i.e., the residual work assignment issue.

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AWARD

Claim dismissed.

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 25th day of October 2006.