

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37984
Docket No. CL-39105
06-3-05-3-588**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Metro-North Railroad Company)

STATEMENT OF CLAIM:

- “1. Carrier violated Rules 1(c), (d), (e), (f), 15(d), May 29, 1990 Letter of Understanding (attached) and other rules of the Agreement when it assigned the work of abolished TCU covered Assistant Station Master positions, located at New Haven, CT, to strangers to the Agreement. This claim is continuing until the disputed work is returned to positions under the Agreement.
2. The Carrier shall now pay Claimants S. Goble, R. Granata, P. Baia, M. Blowe, and J. Burton eight (8) hours at the overtime rate of pay of the Assistant Stationmaster positions, for each and every shift they would have worked had their positions not been abolished, commencing thirty (30) days retroactive from the date of this claim, and continuing each day until the disputed work is returned to TCU Clerical employees. In the event any of the five named Claimants should retire or otherwise become ineligible to receive payment from this Claim, Carrier shall compensate the most senior employee named on the attached list who would otherwise be eligible to hold an Assistant Stationmaster position. This payment is in addition to any other compensation they have received.”

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 Association of Commuter Rail Employees (ACRE) was advised of the pendency of this dispute and chose to file a Submission with the Board.

The instant claim, dated May 17, 2005, contends that the Carrier violated the Scope Rule of the Agreement when it abolished the Assistant Stationmaster (ASM) positions in New Haven, Connecticut, and assigned the work to Yardmasters, who are represented by ACRE.

The Carrier denied the claim on two grounds. First, it asserted that the claim was procedurally defective, in that it was filed outside of the 30 day time limit established under Rule 49 of the Agreement. Second, the Carrier stated that the work at the New Haven Yard had been transferred to Yardmasters pursuant to Public Law Board No. 6805, Award 1, where the Organization was a third party in interest. The Carrier argued that because the matter had already been decided, it was not subject to further appeal.

The Organization's request to docket the claim for conference was denied by the Carrier. So, too, did the Carrier reject the Organization's subsequent notice to docket the instant claim before a Special Board of Adjustment. By letter dated November 2, 2005, the Carrier also protested to the National Mediation Board the Organization's action in listing the matter on the docket of the Third Division. Its

consistent position has been that the claim was conclusively settled by Public Law Board No. 6805, Award 1, and cannot be subject to reconsideration. The Submission filed by ACRE echoes the position stated by the Carrier on the merits and contends that the instant claim is barred under the doctrine of res judicata in light of the previous arbitral determination in Public Law Board No. 6805, Award 1.

The Board carefully reviewed the record and considered the arguments of all parties. We are met at the outset by an important jurisdictional impediment to consideration of the instant claim. The Board is precluded from reconsidering claims that have been previously decided by another Section 3 tribunal. The jurisdictional dispute between the Organization and ACRE regarding the award of work at the New Haven Yard was previously presented to Referee Robert M. O'Brien in Public Law Board No. 6805, Award 1 and resolved in favor of ACRE. The Organization, as a third party in interest to that dispute, appeared at the Hearing and presented oral argument and a written Submission in support of its position. Its interests were fully protected through third-party participation at the Hearing. The Award issued by Referee O'Brien, based as it was on persuasive reasoning and sound logic, decided the question of which organization controlled the work at the New Haven Yard. It must be deemed final and binding on all parties, including the Transportation Communications International Union. See, IBEW v. CSX Transportation, Inc., Case No. 04 C 5292 (7th Circuit 2006).

Based on our examination, it is apparent that the prior Award is dispositive of the dispute now before the Board. The facts and issues attendant to this claim are no different than those that were presented before Public Law Board No. 6805. The Organization may disagree with the prior Award, and in fact it submitted a lengthy dissent, but the doctrine of res judicata bars the Organization from arbitrating a second cause of action. There are numerous decisions which have recognized that relitigation of the same facts and issues cannot be condoned. To find otherwise would defeat the necessary finality that the arbitral process is designed to provide. See, First Division Awards 24290 and 25948 as well as Public Law Board No. 2719, Award 7. We have not been presented with any compelling reason to depart from this sound tenet in the matter at bar.

For the reasons stated, the instant claim must be dismissed.

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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.