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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38023
Docket No. CL-37512
06-3-02-3-626

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. (former Seaboard
(Coast Line Railroad)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood (GL-12935)
that:

1. Carrier violated the Agreement applicable to the Jacksonville Customer Service Center (CSC) on January 15, 2001, and continuing thereafter, when employes not covered by the Seaboard Coast Line (SCL) Clerical Agreement (including Clerks covered by the Louisville and Nashville Railroad Agreement or other CSXT component railroad Agreements, or employes covered by the SCL Clerical Agreement but not employed in Seniority District No. 18, Carrier officials, Yardmasters, and employes of other crafts) located at Atlanta, Georgia, and at other locations throughout Carrier's system, performed the work of adjusting Yard inventories (using the YSIA, YSCS, YSCD and other computer functions involving Yard inventory adjustments in the Yard System), train movement activities, and related functions utilizing various computer functions.
2. Carrier shall now compensate the Senior Available Employee at the Jacksonville CSC (as further described in paragraph 3 herein), commencing on January 15, 2001, under the provisions of Rule 23 (“Notified or Called”) for a minimum of two hours

and forty minutes (2' 40") at the time and one-half rate (the least amount claimable by the Agreement), or the appropriately greater amount calculated on the minute basis if the violative activity occurs over more than 2 hours and 40 minutes during any given shift, to be determined by a joint check of Carrier's records. Carrier is thus placed on notice to retain such records until this claim is resolved.

3. The remedy requested herein shall commence on January 15, 2001, with the first shift of the Jacksonville CSC Atlanta TSC module, and additionally at the first occurrence on January 15, 2001, or thereafter, at any and all other TSC modules where such a violation occurs, and shall be payable on a continuous basis for each subsequent shift and on each subsequent day that the violation is repeated at all yards and terminals within CSXT system. Individual payments shall be made on each date and on each shift to the Senior Available Employee in each TSC module that is usually and customarily assigned to handle the duties of adjusting Yard inventories (using the YSIA, YSCS, YSCD and other computer functions involving Yard inventory adjustments in the Yard System), train movement activities and related functions utilizing various computer functions.
4. This is an all-inclusive claim covering each and every instance beginning on January 15, 2001, and subsequent thereto, wherein Carrier employees throughout its system at locations other than the Jacksonville CSC, perform Yard or terminal inventory adjustments (using the YSIA, YSCS, YSCD and other computer functions involving Yard inventory adjustments in the Yard System), train movement activities and related functions utilizing various computer functions."

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.

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 Third Division Awards 37227 and 37760 and the many other Awards that have now followed those Awards, the Board addressed allegations of violations raised by the Organization which occurred on specific dates at specific locations. In those Awards, we carefully followed a three-part test whereby the Organization has been required to prove that the disputed work: (1) was performed by someone other than a Customer Service Representative (CSR) at the CSC; (2) was performed by a Clerk at the location in dispute prior to the 1991 Implementing Agreement; and (3) was performed by a CSR at the CSC after the 1991 Implementing Agreement took effect. The Organization has been able to meet its burden in a number of the cases. In other cases, that burden has not been met.

Rather than approaching this dispute as it has in the other cases on a fact, date, and location-specific basis, in this claim - and with one broad stroke - the Organization takes a different approach and seeks global relief for generally alleged violations after January 15, 2001 by individuals “. . . located at Atlanta, Georgia, and at other locations throughout Carrier’s system . . .” concerning performance of the disputed “. . . YSIA, YSCS, YSCD and other computer functions involving Yard inventory adjustments in the Yard System. . . .” In the other cases the parties and the Board have not addressed the disputes on such a global scale; rather the parties and the Board chose to examine the cases on specific dates at specific locations.

In the exercise of our discretion and because the numerous other cases have not been decided in the manner now sought by the Organization, we choose not to approach this dispute on a global basis. Instead, because each case is potentially different, we choose to continue with that practice of examining these disputes on a fact, date, and location-specific basis and requiring the Organization to prove the elements of its individual claims under the three-part test. We shall therefore dismiss this general claim.

However, if in the future the Organization is of the opinion that further violations have occurred and if timely and specific claims are filed similar to the ones the Board has addressed in these cases, the Board can assess the merits of those alleged violations utilizing the three-part test.

With respect to the Organization’s request that we order the Carrier to retain its records, we decline to do so. While it might be in the Carrier’s interest to retain its records to avoid the possibility of adverse inferences in the future with respect to remedies for violations that might be found, we have no basis to require the Carrier to take such affirmative steps, particularly given that we are dismissing this general claim.

AWARD

Claim dismissed.

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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 7th day of December 2006.