

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38062
Docket No. CL-38227
07-3-04-3-182

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(CSX Transportation, Inc. (former Louisville &
(Nashville Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood (GL-13034) that:

- (1) Carrier violated the Agreement on various dates in April and May, 2003, as noted in Ms. Morgan’s decline, when a Carmen [sic] was allowed to check various tracks as noted in each claim.
- (2) As a result of this action, Carrier shall compensate Clerk M. J. Williams, ID 18155, one (1) day’s pay at the penalty rate of \$234.41 for each 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.

Beginning April 4, 2003, Carmen, utilizing track lists provided by the Customer Operations Center inspected inbound and outbound trains at Montgomery, Alabama. Clerk M. J. Williams filed a claim asserting that Carmen were performing track checks

in violation of the Clerks' Scope Rule. The Claimant thereafter filed a number of claims, each asserting the same violation and each including a copy of the track list and requesting a one day penalty payment. The claim was pursued on the property with a clear dispute between the parties over all three issues; the Scope Rule of the Agreement, the work performed and the alleged penalty.

The Carrier argues that the alleged "track checking" was incidental work performed by numerous crafts and not covered by the Scope Rule of the Clerks' Agreement. The Carrier argues that the disputed work was not reserved by exclusive language prior to May 1981 when the general Scope Rule was modified, nor does it fall under the "positions or work" language thereafter incorporated. As for the work itself, the Carrier maintains that what Carmen performed on the claim dates was checking placards and assuring that hazmat placards were readable and attached, and that the hazardous material cars were properly positioned. Such work was incidental to the performance of Carmen's duties. The Carrier argues that in the course of their responsibilities, they would incidentally notice any incorrect position of a hazardous car to assure proper placement. Although there has been no violation, the Carrier lastly asserts that the Organization engaged in a pyramiding of claims seeking a windfall for the Claimant.

The Organization maintains that Carmen are performing work that is protected by the Scope Rule of the Clerks' Agreement. The specific work was the physical checking of cars on the tracks. This was work regularly assigned and routinely performed and, therefore, protected under the "positions or work" Scope Rule of the Agreement. It is "track checking" that belongs to the Claimant and not to Carmen that is being violated in this dispute. The Organization agrees that clerical employees produce the list and that Carmen utilize the list to verify the proper position of hazardous material cars and to ensure that proper placards are applied, but disagrees with the Carrier's assertions that this is what Carmen were doing. The Organization argues that Carmen were physically checking tracks to assure that the order of the cars were properly positioned.

First, the Board reviewed the record to determine the exact work in dispute. The work is referred to as "track checking." A careful reading indicates that the work asserted by the Organization as belonging and protected to Clerks is the work of physically checking cars on tracks to assure that there is a proper standing order for cars prior to departure from the yard. A careful reading of the on-property record does not challenge this specific work as shared. What is challenged is the right of Carmen to utilize the generated list of cars to again check the standing order. This is disputed, as the Carrier argues that in the incidental performance of checking placards

and the placement of hazardous cars, Carmen would note incorrect positions. As for scope-covered work, Carmen were performing their own work and any listing or notation of the standing order of cars was shared due to the Carmen's proper performance per FRA requirements.

The Board notes the FRA requirements, which are, in pertinent part:

**"Carmen Are Responsible for Reporting Standing Order Discrepancies
Prior to Departure . . .**

- V. Verifying Hazmat Car Standing Order**
 - A. When Carmen are conducting the out bound air brake test (ITT), Transportation will furnish the current track list for use by the Carmen to verify the standing order of hazmat cars.**
 - B. If there is a discrepancy between the standing order of the hazmat cars in the track and the furnished track list, the Carmen will furnish the car number and correct standing order of the hazmat car(s) to the appropriate yardmaster or trainmaster or, if they are not available, then to the train crew for correction of the consist prior to departure."**

The application of the above requirements provides proof that Carmen are required to check placards and the standing order of hazmat cars. The regular duties of Carmen include those argued by the Carrier, but do not include those asserted by the Organization as being performed.

The Board finds a distinct difference between noting discrepancies associated with hazmat cars for correction prior to departure and the probative evidence provided and discussed by the Organization. Our review of the work performed by Carmen - the track lists - reveals that most often there were no hazmat cars in the track lists altered and checked. We note that the Organization's position throughout the claim asserts that what the Carmen are performing is "track checking." The Organization states:

"Documentation was furnished with the claims listing the cars added, out of order, deleted, and checked with signature by other than a Clerical employee. The cars listed were not the hazmat cars you assert

the Carmen are verifying incidental to their duties. Surely, there is a difference between an empty, covered hopper and a loaded hazmat car as shown by the evidence from the physical check?"

The record in this case supports the Organization's assertion. The evidence indicates that the lists were fully checked, well beyond a simple performance of placards and hazmat placements. They were noted for extra cars and the order of cars and also for trains without any hazmat cars. Our review finds sufficient proof that this work was scope-protected and its performance by Carmen was not incidental to their reporting of hazmat placement errors.

With respect to the third issue disputed, i.e., the amount of the claim, the Board notes that the Organization modified its claim on the property. We also find a days' pay for each violation at the penalty rate to be excessive and unsupported by the record. The Board sustains the claim for a call for each violation as per L&N Rule 19 at the straight time rate of pay.

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 25th day of January 2007.