

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38372
Docket No. CL-38511
08-3-NRAB-00003-040543
(04-3-543)

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

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood (GL-13062) that:

- (a) The Carrier violated the TCU/CSXT North Agreement effective June 1, 1999, particularly Rules 24, 40, 64, 67 and other Rules, when commencing on or about June 2, through June 7, 2003, they failed to fully compensate the Claimant for the Training Rate while being held to train employee M. Meilak.
- (b) The Carrier should now allow Claimant Chader eight (8) hours training pay, Thirty-two (\$32) for the period June 2 through June 7, 2003 until the violation was corrected.
- (c) This claim is presented in accordance with Rule 45 and should be paid as presented.”

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.

This is a companion claim to those which were previously decided in Third Division Awards 38120 and 38121 with Referee Wesman participating.

Basically, as concerns the issue here in dispute, Claimant Chader was assigned to Clerk/Messenger Position No. 4B02-353 in Selkirk Yard, Selkirk, New York, with scheduled work hours from 11:00 P.M. to 7:00 A.M., Tuesday through Saturday, with Sunday and Monday as rest days. On June 2, 2003, another employee, Clerk M. Meilak, exercised seniority in displacement of Claimant Chader from the Clerk/Messenger position. Because it was necessary Clerk Meilak undergo certain familiarization and training for the position "including driving a company vehicle through the yard in compliance with company qualifications" and visibility is significantly reduced on third shift operations, the Carrier elected to hold Claimant Chader on Position No. 4B02-353 from June 3 through June 11, 2003 while Clerk Meilak engaged in such training during the daylight hours of the first shift. This training was scheduled during the daylight hours of the first shift, the Carrier submits, as in past like situations, so as to provide the safest possible environment in which an employee could become fully qualified with the driving and other aspects of the Clerk/Messenger position.

As concerns the familiarization training of Clerk Meilak on the first shift, the Board concludes, as held in Third Division Award 38120: "Carrier's rationale for training third shift Clerk/Messengers during the day, supported in part by evidence of its long-standing unrefuted past practice in this regard, is neither unreasonable nor pretextual." Further, as many times held in prior decisions of the Board, a Carrier has a responsibility to maintain the safe and efficient operation of its facilities for the benefit of all its employees and its property, and in the absence of a showing that its actions in this regard were arbitrary or evidentiary of bad faith the Board should not set aside the judgment of the Carrier.

In study of other argument advanced to the Board, we find no support of record to conclude that because Clerk Meilak's hours were temporarily changed for training purposes, that Claimant Chader was deprived of an instructor's rate of pay for training an employee. Rule 67 of the Agreement specifies that an employee who is "directed to instruct and train other employees" shall be paid, in addition to his or her regular rate, \$4.00 per hour "for each hour of instruction." Claimant Chader is not shown to have been directed to train Clerk Meilak, and with the training taking place on the first shift, while Claimant Chader continued to work on the third shift, it is evident that Claimant Chader did not provide any instruction to Clerk Meilak.

The Board finding no support for sustaining the claim, it will 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 20th day of November 2007.