

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40827
Docket No. CL-41028
11-3-NRAB-00003-090421**

The Third Division consisted of the regular members and in addition Referee Lisa Salkovitz Kohn when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the TCU (GL-13207) that:

(a) The Carrier violated the CSXT-North Rules Agreement effective June 1, 1999, particularly Rule 1 and Rule 63 when on said dates the company used CBS drivers to retrieve train orders from printers in Crestline office and deliver them to crews/trains. The Carrier has cutoff the 3rd shift clerk in Crestline and instructed the clerks in Willard, Ohio, to start printing the train orders and sending them to the printers in the Crestline office. After the orders are printed, the Carrier sends a CBS driver to retrieve them from the Crestline printers and take them to the corresponding trains. This is a direct violation of the contract. Train order handling is the work of clerks according to the agreement, with no exceptions. The Carrier cannot just cut a job off and have an outside company come in and do the work. Rule 63 is very clear about Train Order handling and it states:

(a) No employees other than covered by this Agreement and Train Dispatchers will be permitted to handle train orders except in cases of emergency.

(b) If train orders are handled at stations or locations where an employee covered by this Agreement is employed but not on duty, the employee, if available or

can be promptly located, will be called to perform such duties and paid under the provisions of Rule 25 (a); if available and not called, the employee will be compensated as if he had been called.

Then Rule 1, Scope, is clearly being violated since a CBS driver is not covered by this Agreement, therefore has no claim to any work covered by this Agreement, which includes train order handling and other documents related. I have enclosed a letter from CBS drivers stating that they have been physically taking orders off of the printers in the Crestline office and delivering them to crews. This is a direct violation according to the Agreement and should be ceased immediately.

(b) Claimant(s) senior available clerk was available for work and should have been called since it is clerical work. Claimant(s) now be allowed eight (8) hours pay at time and one shift at his/her punitive rate of pay or her guarantee, whichever is higher, for this violation starting on April 23, 2007 and continuing every day after until violation is halted.

(c) This claim is being submitted in accordance with Rule 45 and should be allowed.”

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.

On June 18, 2007, the Organization filed a claim on behalf of the senior available Clerk asserting that the Carrier had violated Rules 1 and 63, by sending a CBS driver (an outside contractor) to retrieve train orders from the Crestline office and deliver them to corresponding trains. The orders are sent to the Crestline office printers by a Clerk located in Willard, Ohio.

The Carrier responds that the documents handled by CBS drivers are not train orders, but Train Line Up Reports that do not govern the movement of trains, and that the act of tearing a report off of a printer is not exclusive to any craft. The CBS drivers have been instructed only to pick up their own list of arriving and departing trains, and have not been instructed to perform duties that might be deemed Clerical duties at the Crestline office. The Carrier also objects that the Organization acquiesced in the Carrier's practice by failing to challenge it until more than one year after it had been initiated in April 2006.

The Board finds that the Organization failed to support its claim to the work involved in this case. The Organization never refuted the Carrier's on-property assertion that "No evidence has been presented that the CBS drivers are performing any duties other than getting their list of train line ups from the printer as they were originally instructed to do." That assertion must be considered as an established material fact. As a result, the handling of train orders is not in issue here. The Organization failed to demonstrate that the Carrier violated any Agreement by permitting CBS drivers to retrieve their own list of train line ups from the printer. Accordingly, the claim must be denied, without need to consider any other arguments made by the parties.

AWARD

Claim denied.

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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 11th day of January 2011.