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NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29613
Docket No. CL-29451
92-3-90-3-380

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications
(International Union
(
(CSX Transportation, Inc. (formerly
(The Louisville and Nashville
(Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood (GL-10478) that:

1. Carrier is in violation of the Clerical Agreement at Decatur, Alabama on January 10, 1989 by requiring and/or permitting Yardmaster E. W. Smith to sign bills of lading.

2. Claimant, Senior Clerk Available, Extra Clerk in preference, shall now be compensated eight (8) hours' pay at the pro-rata rate of Utility Clerk, Position No. 204, for January 10, 1989, in addition to any other compensation this Claimant may have already received on this date, returning this work to the clerical employees covered by this Agreement."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

As Third Party in Interest, the United Transportation Union Yardmasters Department was advised of the pendency of this dispute,

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but did not file a Submission with the Division.

Except for the date of alleged violation, this Claim is identical with respect to facts, applicable Agreement provisions and positions of the Parties with the Claim recently decided by this Board in a companion case.

For the same reasons developed fully in Third Division Award 29612 the present Claim likewise must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of April 1993.


LABOR MEMBER'S DISSENT
TO
AWARD 29708 - DOCKET SG-29613
(Referee Suntrup)

The Majority erred in their decision to deny the Employee's claim, and failed to recognize the merits of this dispute. As denoted in the record, the Organization acknowledged that the Board had previously addressed the issue of transporting or hauling equipment.

The Organization's submission noted that the hauling of the equipment was not the sole issue to be resolved, however. The basis of the Claim was that the supervisor installed and tested the equipment after transporting it to the job site. Notwithstanding, the Organization noted that numerous Board Awards have held that the hauling of equipment for immediate use has been considered a violation of the Agreement.

The Carrier, on the other hand, never addressed the real merits of the dispute and took the singular position that hauling equipment is not covered in the Scope of the Agreement.

This Award essentially rewards the Carrier for ignoring the facts of the case. Had the Majority reviewed the complete record of this case, a proper decision would have been rendered and there would have been no need for this dissent.



C. A. McGraw, Labor Member