

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29630
Docket No. CL-30102
93-3-91-3-541

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin 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-10626) that:

(TCU File # BO-1.18(65); Carrier's File # 89-0868)

- (1) Carrier violated the Agreement when, on June 23, 1989, it allowed or permitted four employes of the Dryberg Corporation to transfer the contents from car CN796054 to car C0494341.
- (2) Because of the violation, Carrier shall compensate the following employes of the Materials Department, Cumberland, Maryland, eight (8) hours each at the pro-rata rate of their respective positions as follows:

H. W. Rawlings	\$108.18
D. G. Shrout	108.18
G. H. McChem	105.93
J. M. Wagner	105.93"

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.

The Organization alleges a violation of the Scope Rule when Carrier allowed outsiders to transfer the contents of one box car to another at its facility in Cumberland, Maryland, on June 1989.

From the parties' handling of the matter on the property, the pivotal issues are whether the facility in question is a store house or freight house and whether the employees have customarily, traditionally and historically performed the kind of work in question.

The on-property record in this matter consists of only four documents: the Claim and one appeal by the Organization together with two denials by the Carrier. There is no supporting evidence included by either party. As a result, the record confronting us is one of assertion countered by opposing assertion. The Organization asserts the facility in question is part of a store house and that its members have exclusively performed the kind of work in dispute. The Carrier asserts a locomotive shop is involved and that the work is not exclusive to any craft. We note from the record that the Claim, itself, refers to the facility in question as the "Diesel Shop."

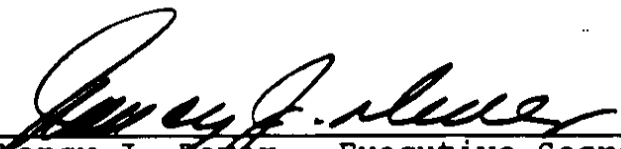
In disputes of this nature, it is well settled that the Organization has the burden of proving, by submission of probative evidence, that the Carrier has violated the parties' Agreement. On the record before us, we find that the Organization has not satisfied this burden. Accordingly, the Claim must 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.