

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30134
Docket No. CL-30115
94-3-91-3-558

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

(Transportation Communications International
(Union
PARTIES TO DISPUTE: (
(Chicago and Illinois Midland Railway
(Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Organization (GL-10628) that:

1. Carrier violated the Clerks' Rules Agreement expressly Rules 1, 45 and any associated Rules contained therein when it allowed employees employed by Commonwealth Edison to make an initial check and corrected inbound list on unit coal train 49YY016 at Powerton, Illinois.
2. Carrier shall now be required to compensate Ms. K.A. Stauthammer, furloughed clerk headquartered at Powerton, three (3) hours' pay for the date of August 15, 1990 (a call)."

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 waived right of appearance at hearing thereon.

The on-property record establishes that on August 14, 1990, one of Carrier's Clerks at Havana, Illinois, prepared an inbound listing of cars for a unit coal train destined for the Commonwealth Edison power plant at Powerton, Illinois. There is no dispute that Carrier crews thereafter separated the train into three cuts and placed the cars on three separate tracks located on power plant property. A copy of the inbound list was then provided to the customer.

Along with the Claim, the Organization furnished Carrier a copy of the inbound list that had the original car numbers lined out with new car numbers handwritten just to the right of each of the original car numbers. The copy also contained handwritten notations to show which of tracks 9, 10 and 11 held which cars.

The Claim, in essence, alleges that Commonwealth Edison employees performed an initial check of the inbound list, made corrections to it and then faxed it back to Havana for use in preparing an outbound list. The actions of the Commonwealth Edison employees, it is alleged, deprived the furloughed Claimant of a work opportunity for which pay is demanded.

New matters were raised in both parties' Submissions that were not included in the on-property record. We have not considered such material.

After examining the original list and the allegedly corrected list, it appears that the second list is merely a listing of the cars as they were placed on the three tracks. A partial inspection of the two lists shows the same car numbers in a different order. There is no dispute that the customer may make whatever notes it wants for its own purposes on a Carrier provided list.

The parties made several assertions about their diametrically opposed interpretations of the foregoing facts. In the final analysis, however, the record fails to show how or in what manner the altered listing was used in the preparation of an outbound list, or that the Carrier even knew the customer would alter the original list. As a result, the record fails to show how the furloughed Claimant was deprived of any work, performed by outsiders, that needed to be performed by a Carrier employee. Since the Organization has not proven the requisite elements of a Claim, on this record, the claim must be denied.

A W A R D

Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin / lw
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 4th day of April 1994.