

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30520
Docket No. CL-29919
94-3-91-3-307

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

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood, that:

1. Carrier is in violation of the Clerical Agreement at Birmingham, Alabama by requiring and/or permitting the Retarder Operator to perform work that previously was assigned to clerical positions (Weigh Clerk and/or Utility PICL Clerk).
2. Claimants shall be compensated eight (8) hours' pay at the rate of Utility PICL Clerk, Position Nos. 106, 205 and 306, beginning January 2, 1990, and continue each day, each shift, until this claim is resolved. This is to be in addition to any other compensation any Claimant may have already received for these dates."

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.

Carrier operates a classification yard at Birmingham, Alabama. This yard uses a "hump" to switch cars, operated by employees classified as Car Retarders, who are represented by the United Transportation Union. Car Retarders are responsible for governing the speed of cars descending the hump and for controlling which track cars enter, following a Yardmaster's list of target tracks. The Perpetual Inventory Car Location (PICL) is maintained by computer based upon data input by PICL clerks who are represented by TCU.

Prior to November 1989, if it was necessary for the Car Retarder to deviate from the original switch list he manually made note of the switch. Misrouted cars were eventually switched to the correct track by a "TRIM crew" working independently from Car Retarders. When such moves were made, the Foreman of the TRIM crew would contact the Clerk to have the inventory adjusted. After the cars were switched, the Car Retarder telecopied his list, with corrections noted, and a clerical employee would update the PICL for all of the cars humped.

On November 15, 1989 Carrier announced the implementation of a new Hump Process System which allowed the Car Retarder to have direct computer access via CRT to enter switch list corrections. The record shows that no claim was filed at the time the new hump system was brought on line and the Car Retarder employees began to enter corrections in switch lists using a CRT "fix-it switch," rather than manually correcting the lists and faxing them to the PICL Clerk for input. Three months and nine days later, however, following the abolishment of some Weigh Clerk positions, the Organization filed the instant claim alleging that the inventory correction now performed directly by the Car Retarder was work "previously and exclusively" performed by the clerical employees. Carrier denied the claim on several procedural and merits grounds, primarily asserting that the Claim was not timely filed under the 60 day time limit of Rule 36.

We carefully reviewed the record evidence and it clearly supports Carrier's motion to dismiss this claim for lack of timely filing under Rule 36. The Organization argues that the trigger date for the claim was some date later than November 15, 1989 when Carrier announced implementation of the new Hump System. Even if **arguendo**, this is reasonable, there can be no doubt that employees were fully informed of the work implications for the PICL Clerks and Car Retarders no later than December 18, 1989, when the Trainmaster notified all affected employees by E-mail memorandum.

To be timely under Rule 36, the claim had to be filed no later than 60 days after November 15 or, at the latest, 60 days after

December 18, 1989. The claim filed February 26, 1990 plainly was out of time and must be dismissed without comment on the underlying merits.

AWARD

Claim dismissed.

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 9th day of November 1994.