

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30657
Docket No. CL-30012
95-3-91-433

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

(Transportation Communications International
(Union
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Seaboard
(Coast Line Railroad Company)

STATEMENT OF CLAIM:

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

1. Carrier violated the Agreement(s) when on January 10, 1990, it required, permitted or allowed Supervisor Mr. Jim Sorrells to complete work orders for Miami PICL Clerk. This work at Tampa Service Center is work that has been performed by employees covered by TCU Agreement.
2. Account violation in Paragraph 1, Carrier shall compensate the Senior employee, unassigned in preference, one (1) day's pay at the rate of \$108.11."

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.

This claim arose at Carrier's Service Center in Tampa, Florida, on January 10, 1990, when a Supervisor completed three work orders, a duty normally assigned to the PICL Clerk at the Center.

On March 8, 1990, the Organization submitted a claim, "on behalf of the Senior Employee," alleging that a Supervisor performed work "normally performed by TCU covered employees, in violation of Rule 1-Scope." Carrier denied the claim, arguing that:

"Supervisor Sorrells found three (3) work orders, each of which was missing one entry. Supervisor Sorrells informed Clerk Stiles (now Hyatt) that work orders for these three trains were outstanding. After reviewing these work orders Clerk Hyatt asked for assistance in determining missing entries. Mr. Sorrells then researched the work orders for missing information, inserted same and instructed Clerk Hyatt on what to look for should this happen again.

You have failed to identify a claimant. You are fully aware that the Schedule Agreement contemplates that the moving party in a claim or grievance will identify the claimant(s) for whom the claim is being presented. This burden has not been satisfied here. The claim is therefore, denied on this basis.

Additionally, the claim presented is excessive. The actual duty at issue only took approximately one (1) minute, and any compensatory payment would be so slight it would be disregarded under the DI MINIMUS rule."

For its part, the Organization submitted that Clerk Hyatt had categorically denied asking for the Supervisor's help. In an October 16, 1990 statement, Clerk Hyatt maintained the following:

"Supervisor Sorrells asked me to give him the work orders. He didn't tell me why he wanted them. Later on during the night he gave me the W/Os and told me to place them back in the files. I asked him what he was doing with them, and he told me they were not complete. I asked if he had completed them, and he said he had. I knew nothing of the W/Os being incomplete. If I had, I would have completed them."

Further, with regard to Carrier's contention that the Claimant was not properly identified, the Organization maintained that: "When Trainmaster Winberry and Division Manager Turner first denied the claim without raising any issue of irregularity, it constituted a waiver of any lack of regularity, even if such existed."

Finally, with respect to Carrier's *de minimis* argument, the Organization submitted that it "is exercising its right to protect its jurisdiction against encroachment, however small."

Further correspondence between the Parties was to no avail. The issue is now before the Board for resolution.

The salient facts of what duties the Supervisor performed are not in dispute. Nor can it be reasonably argued that this is not routine clerical work covered by the Agreement. The controversy revolves around Carrier's affirmative defense that Claimant asked the Supervisor to assist her. The Organization presented a signed statement from Clerk Hyatt in opposition to the second-hand assertion by Carrier's Labor Relations Officer that the Supervisor had been asked by Claimant for assistance. Carrier took no exception to Clerk Hyatt's statement, nor did the Supervisor furnish a rebuttal statement refuting Clerk Hyatt's account of the incident. Such unrefuted direct evidence must be considered factual and dictates a sustaining Award.

Regarding compensatory damages, the majority line of precedent Awards reason that the Organization did properly name the Claimant. Even if Clerk Hyatt was not the most senior Clerk on the date at issue, she was the PICL Clerk on duty at the time this dispute arose. Finally, Third Division Award 25918 speaks to Carrier's argument with regard to *de minimus* violations:

"The Carrier's contention that the work performed was excusable as '*de minimus*' must fail in the absence of support from the Agreement. The Organization is entitled, consistent with numerous Third Division awards, to protect its jurisdiction against encroachments, however small; positions and work may be made up of many small duties and tasks, which are susceptible to erosion and entitled to protection."

The Supervisor did perform duties which are normally assigned to, and performed by, the PICL Clerk at the Service Center. Carrier is directed to compensate PICL Clerk Hyatt for one call under the minimum time rule.

AWARD

Claim sustained in accordance with the Findings.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 31st day of January 1995.