

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30985
Docket No. CL-30832
95-3-92-3-645

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
(Seaboard Coast Line Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-10855) that:

1. Carrier violated the provisions of the Agreement at Hamlet, North Carolina at 7 a. m. on Monday, January 29, 1990, and each and every day thereafter, for three (3) eight (8) hour shifts per day, seven (7) days per week, when it failed and/or refused to allow employees protecting Data Processing positions (commonly known as Scale Clerks) to input, update, report and transmit via computer (thru CRT screens), the "LMTM"- Trainmaster Line-up Screen for Hamlet Terminal.
2. Carrier shall now compensate the Senior Available Data Processing (Scale) Clerk, extra in preference, \$108.11 each and every eight (8) hour shift, three (3) shifts per day, seven (7) days per week, at the appropriate rate, be it straight time or overtime, with interest at the annual rate of twelve (12) percent until this claim is paid and satisfied in full, in addition to any other compensation received or entitled, for so long as the violation occurs."

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 Locomotive Train Management Trainmaster Line-up Screen ("LMTM") Report is a hard copy form the Trainmaster completes for each train showing: the train number, project-ready time, order time, call time, departure time, power delay, loads, empties and tons. Data from the LMTM Report is entered into the computer each time a train is completed. After the Report has been entered into the computer, the LMTM screen is updated several times during the shift.

This dispute arose when Carrier altered the method by which the Report was input into the computer system at Hamlet Terminal. Prior to January 29, 1990, the Trainmaster would complete the LMTM by hand, and give the Report to the Data Processing Clerk for entry into the computer. This claim arose when the Trainmaster began entering data from his handwritten LMTM log directly into the Trainmaster's Line-up at the LMTM screen. That new methodology bypassed or eliminated the step by which the LMTM form was given to the Data Processing Clerk for data input.

On April 20, 1990, the Organization submitted a claim alleging that:

"Carrier failed and/or refused to allow employees protecting Data Processing Positions (1050), commonly known as Scale Clerks, when Carrier instructed Local Trainmasters to personally input, update, report and transmit the aforementioned lineup. This is in violation of the Clerks Agreement."

The Organization further asserted that:

"Trainmasters have never input the LMTM Report, or any other report into the computer prior to this claim. Furthermore, the work has not been eliminated, it has been removed from the clerical craft and assigned to the Trainmasters in violation of the Scope Rule."

In support of its assertions, the Organization referred to a Carrier directive dated May 4, 1988, which described the work allocation as follows:

"Effective tonight at midnight, Hamlet Terminal will be added to the Terminal Project Screen. This is the screen that we have set our book up to be placed in the computer daily and updated every four hours.

It is my suggestion that as soon as the Trainmaster finds out what he will be running on his shift, this information should be extended to the 1050 operator who will input the information into the computer. This information is to be updated to the 1050 operator every four hours."

Carrier denied the claim, responding:

"Prior to 1989, the local terminal trainmasters would converse, via telephone, with the power desk in Jacksonville, to arrange and coordinate power for outbound trains originating at Hamlet Terminal. With the implementation of the Locomotive Management System, the need for the telephone communications was eliminated. Again, as recognized by previous claims, advancement through technological changes have been anticipated by both the Organization and the Carrier. In lieu of writing the information down on a locally reproduced form and giving this form to a designated position to transfer the information into the system through the use of a CRT. The individual providing the information enters it directly into the system for electronic message transfer to the Power Desk in Jacksonville, Florida. This enables communication directly between the parties involved.

It has long been established that the use of a CRT for the electronic passing of messages/information is not solely assigned to the TCU organization. Transportation officers, as well as members of other crafts, routinely use a CRT in the daily performance of their duties. Therefore, this claim is without merit."

There is no dispute that prior to 1989, the Data Processing Clerk received update data to be entered or updated to the Terminal Projection Screen. There is also no dispute that the Trainmaster gave this information to the Clerks, who physically entered the data into the computer. Carrier's assertion that Trainmasters have "always maintained and continue to maintain a log that includes LMTM data," is not contradicted, but it begs the question at issue in this case. From the evidence presented, it is equally true that the job of data entry into the computer had been

part f the Scale Clerks' duties prior to January 29, 1989.

Therefore, when Carrier unilaterally removed that duty from the Clerk and assigned it to the Trainmaster, it was a violation of Rule 1 (d) of the Agreement. To that extent, this claim must be sustained.

However, with regard to damages, it would seem that eight hours is disproportionate to the offense and excessive, and twelve percent interest is not appropriate. Therefore, we direct Carrier to pay the proper Claimant for one (1) three (3) hour call per shift per day for the duration of the violation. Finally, the propriety of Carrier's abolishment of the Data Processing Position in 1991, subsequent to the filing of the claim addressed in this Award, is outside the scope of this dispute. Accordingly, we neither express nor imply any opinion regarding that personnel action.

AWARD

Claim sustained in accordance with the Findings.

ORDER

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 26th day of July 1995.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 30985

DOCKET NO. CL-30832

NAME OF ORGANIZATION: (Transportation Communications International
(Union

NAME OF CARRIER: (CSX Transportation, Inc. (former Seaboard
(Coast Line Railroad Company)

REQUEST FOR INTERPRETATION: This Board issued a decision in Third Division Award 30985, dated July 26, 1995, sustaining the claim presented in Docket CL-30832. The standard order accompanying that Award directed Carrier to make the Award effective on or before thirty (30) days following the postmark date the Award was transmitted to the Parties. By letter dated September 3, 1996, the Organization's General Chairman advised the Board that "a dispute exists between the Parties with respect to the proper interpretation of Award 30985, Docket CL-30832" and requested "an official interpretation of the Award."

The issue presented was whether, in sustaining the above claim, this Board had found or intended that Carrier's liability under Award 30985 "terminated in September 1991." Upon due notice, Carrier joined in the request for interpretation. Both Parties filed supplemental briefs and presented oral argument before the Board on March 18, 1997.

FINDINGS:

The claim in Docket CL-30832, decided by our Award 30985, reads as follows:

"Claim of the System Committee of the Organization (GL-10855) that:

1. Carrier violated the provisions of the Agreement at Hamlet, North Carolina at 7 a. m. on Monday, January 29, 1990, and each and every

day thereafter, for three (3) eight (8) hour shifts per day, seven (7) days per week, when it failed and/or refused to allow employees protecting Data Processing positions (commonly known as Scale Clerks) to input, update, report and transmit via computer (thru CRT screens), the 'LMTM'- Trainmaster Line-up Screen for Hamlet Terminal.

2. Carrier shall now compensate the Senior Available Data Processing (Scale) Clerk, extra in preference, \$108.11 each and every eight (8) hour shift, three (3) shifts per day, seven (7) days per week, at the appropriate rate, be it straight time or overtime, with interest at the annual rate of twelve (12) percent until this claim is paid and satisfied in full, in addition to any other compensation received or entitled, for so long as the violation occurs."

Our Award 30985, partially sustaining the quoted claim, includes findings of fact, contract interpretation and a remedial order, reading in pertinent part as follows:

"There is no dispute that prior to 1989, the Data Processing Clerk received update data to be entered or updated to the Terminal Projection Screen. There is also no dispute that the Trainmaster gave this information to the Clerks, who physically entered the data into the computer. Carrier's assertion that Trainmasters have "always maintained and continue to maintain a log that includes LMTM data," is not contradicted, but it begs the question at issue in this case. From the evidence presented, it is equally true that the job of data entry into the computer had been part of the Scale Clerks' duties prior to January 29, 1989.

Therefore, when Carrier unilaterally removed that duty from the Clerk and assigned it to the Trainmaster, it was a violation of Rule 1 (d) of the Agreement. To that extent, this claim must be sustained.

However, with regard to damages, it would seem that eight hours is disproportionate to the offense and excessive, and twelve percent interest is not appropriate. Therefore, we direct Carrier to pay the proper Claimant for one (1) three (3) hour call per shift per day for the duration of the violation. Finally, the propriety of Carrier's abolishment of the Data Processing Position in 1991, subsequent to the filing of the claim addressed in this Award, is outside the scope of this dispute. Accordingly, we neither express nor imply any opinion regarding that personnel action. (Emphasis added).

AWARD

Claim sustained in accordance with the Findings.

ORDER

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"**

The claim sustained by this Board in Award 30985 was predicated upon application of the express language of Rule 1, Section (c) to a specific proven set of facts giving rise to that claim; i.e., on January 29, 1990, and for an indeterminate period of time thereafter, Carrier directed the Hamlet Terminal Trainmaster to input and update train lineup data directly into the computer system through a CRT keyboard and screen, rather than giving that data to the 1050 Clerk for keyboard input into the computer system. We were persuaded from the record evidence that performance of that specific work at that specific location was reserved to Claimants by the language of Rule 1, Section (c) of the Scope Rule in the Agreement of June 1, 1981. That was the only issue presented for our determination in Docket CL-30832 and that is the only issue we decided in Award 30985. We specifically declined to decide a related allegation by the Organization regarding abolishment of the Data Processing Position in 1991. By the same token we did not consider, decide or intend that Carrier's liability for the proven Scope Rule violation ceased, tolled or terminated in September 1991.

Our Award was premised upon performance by the local terminal Trainmasters at Hamlet, North Carolina, of TCU Agreement-covered train line-up data entry work via CRT and keyboard which, prior to claim dates, had been performed by the "Scale Clerks." Our decision focused upon the reality of the performance of that keyboard data entry work, and directed Carrier to pay appropriate monetary damages "for the duration of the violation." We did not consider, let alone decide, that a design change in the appearance of forms or templates used by Trainmasters in the performance of the Agreement-covered data entry work would cure the violation. Specifically, we did not consider, decide, state or imply that the violation ceased or was mooted by any modification in the LMTM form which may have occurred in September 1991. Had we been so persuaded, we would have expressly cut off the awarded damages at that point, rather than directing payment "for the duration of the violation."

In our considered judgement, the particular claim submitted in Docket CL-30832 was determined with finality by the partially sustaining decision in Award 30985. That decision held that the specific action of Carrier which the Organization grieved did constitute a violation of Rule 1 (Scope) Section (c). That decision obligates Carrier to compensate the proper Claimant, whose identity is readily determined by a joint check of extra board calling records on and after January 29, 1990, one (1) three (3) hour call per shift under the Call Rule rate, for January 29, 1990, and for each subsequent day Trainmasters perform the Agreement-covered work, unless and until that violation ceases. Those determinations and directives are reiterated herein. It is well settled that enforcement of its own decisions is beyond the purview of this Board, but we do urge and anticipate prompt compliance with Award 30985.

Referee Dana E. Eischen who sat with the Division as a neutral member when Award 30985 was adopted, also participated with the Division in making this Interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 9th day of July 1997.

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

INTERPRETATION NO. 2 TO AWARD NO. 30985

DOCKET NO. CL-30832

NAME OF ORGANIZATION: (Transportation Communications International Union

NAME OF CARRIER: (CSX Transportation, Inc. (former Seaboard
(Coast Line Railroad Company)

INTERPRETATION: The Board issued a sustaining decision in Third Division Award 30985, dated July 26, 1995, deciding Docket CL-30832; and subsequently issued Interpretation No. 1 under date of July 9, 1997. By joint letter dated November 7, 1997, the Organization's General Chairman and Carrier's Director Labor Relations advised the Board that the Parties had arrived at a mutually satisfactory procedure for identifying the appropriate Claimants and their respective proportionate share of the overall damages payable in compliance with Award 30985.

On that basis, the Board adopts and endorses the final disposition of this matter set forth in pertinent part in the above-referenced Joint Letter, and directs compliance with those terms and conditions, as follows:

1) The group of Claimants would include all employees who worked at the Hamlet Facility on clerical seniority roster SCO2 during the claim period and who have remained actively at work, are on sick leave, or have subsequently retired or died, except that any former employee who has accepted a separation payment and signed a Resignation Agreement and Release is not included in the group of Claimants.

2) Each of these Claimants shall receive a proportionate share of the \$350,000 equal to the ratio of the number of months worked by that

employee during the claim period to the total number of months worked by employees during the claim period. A month's work shall consist of ten or more days of work in that month.

Referee Dana E. Eischen who sat with the Division as a neutral member when Award 30985 was adopted, also participated with the Division in making this Interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of February 1998.