

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32874
Docket No. CL-33587
98-3-97-3-17**

The Third Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(CSX Transportation, Inc. (former Chesapeake and
(Ohio Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11676) that:

A) The Carrier violated the terms of the Memorandum Agreement of December 4, 1990, when they failed and/or refused to assign the duties of dispatching taxis and D&T Limos to the Administrative Clerks at Walbridge, Ohio, effective December 5, 1993.

B) The Carrier shall now compensate the below listed claimants one additional pro-rata day at the daily rate of \$121.97, in addition to all other monies earned, starting December 5, 1993, and continuing until the violation ceases.

C) The Carrier shall be required to return the dispatching duties to the TCU Administrative Clerks or establish new position to perform the duties.

<u>Claimant</u>	<u>ID Number</u>	<u>Position</u>	<u>Hours</u>	<u>Days Worked</u>
L.D. McCarthy	193532	4p70-101	8am-4pm	Tues-Sat
R. Robson	189161	4p70-201	4pm-12m	Thurs-Mon
M. Savage	194018	4p70-301	12m-8am	Sun-Thurs
A. Yockey	607210	Relief 2	various	Sat-Wed
R. Gerrard	607222	Relief 3	12m-8am	Friday only”

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 were given due notice of hearing thereon.

As Third Party in Interest, the United Transportation Union - Yardmaster Department was advised of the pendency of this dispute, but it chose not to file a Submission with the Board.

On January 19, 1994, the Organization initiated a continuing claim contending that the Carrier improperly reassigned the dispatching of taxis and limousines to transport train and engine employees at Walbridge, Ohio, from employees covered by the scope of the Agreement to persons not covered by the scope of the Agreement. In essence, the Organization argued that regardless of whether the Carrier uses taxis or limousines to transport train and engine crews, the work of dispatching those taxis and limos belongs exclusively to the clerical craft per Rule 1 of the Agreement. The Organization further avers that the December 4, 1990 Memorandum of Agreement refers solely to crew hauling as opposed to dispatching the mode of transportation for hauling crews. In support of its position, the Organization cites internal correspondence dated December 6, 1990 from the Carrier's Assistant Vice President of Labor Relations to the Division Manager at Walbridge. The Organization seeks a day's pay for each of five Claimants until the alleged Rule 1 violation ceases. Also, the Organization petitions the Board to issue an order that the work be reassigned to Administrative Clerks or Assistant Chief Clerks.

The Carrier responds that, both before and after the consummation of the December 4, 1990 Memorandum of Agreement, Yardmasters dispatched Crew Haulers regardless of who actually performed the work of transporting crews. The Carrier also contends that the December 4, 1990 Memorandum of Agreement definitively disposed

of any claims surrounding the transporting of train and engine service employees at Walbridge. Finally, the Carrier submits that the Organization misinterpreted the Assistant Vice President's internal correspondence.

Sections 4(a) and 4(b) of the December 4, 1990 Memorandum of Agreement read:

“(a) The parties further agree that on and after the date this agreement is signed, any functions relating to transporting train and engine crews or other Carrier employees, and/or Carrier documents pertaining to conducting of the Carrier's business, to and from or within Walbridge, Ohio and its environs (including Presque Isle), may be accomplished in any manner deemed feasible by the Carrier, including (but not limited to) the utilization of taxi service or other outside services; and that the performance of these functions in this manner shall not constitute a violation of any provision of the Schedule Agreement between the Carrier and the Organization party signatory to this agreement, or any addenda or interpretations applicable to that Schedule Agreement.

(b) It was further understood and agreed that all claims and grievances originating at Walbridge, Ohio and its environs (including Presque Isle, Ohio) involving the issues that are described above, whether or not such claims and grievances have been submitted in writing and are at a subsequent state of handling by the parties or are being held in abeyance by any party for subsequent submission and/or handling, are hereby withdrawn and disposed of in their entirety in exchange for the considerations and agreements set forth herein; and no further claims or disputes involving issues resolved herein will be submitted or progressed by any party.”

Section 4(a) of the December 4, 1990 Memorandum of Agreement announces that **“. . . any functions relating to transporting train and engine crews . . .”** can be accomplished in any fashion as dictated by the Carrier. This language is plain and unambiguous. The term **“any functions”** is all encompassing and includes any duties **“relating to”** crew hauling. Dispatching taxis or limousines is a function integral to transporting crews. Indeed, a crew cannot be hauled unless some form of transportation is dispatched to pickup and carry train and engine service employees.

Because dispatching taxis and limos is a crew hauling function within the meaning of Section 4(a) of the December 4, 1990 Memorandum of Agreement, Section 4(b) barred the Organization from progressing any claim regarding crew hauling including the instant claim.

The plain and unambiguous language of the December 4, 1990 Memorandum of Agreement overrides any contrary interpretation that might be contained in the December 6, 1990 internal correspondence from the Carrier's Assistant Vice President of Labor Relations.

Similarly, the plain and unambiguous language of the December 4, 1990 Memorandum of Agreement supersedes any past practice of assigning the work. Consequently, the Board need not decide if Yardmasters traditionally performed the work in dispute. Put simply, Section 4(a) of the December 4, 1990 Memorandum of Agreement gave the Carrier the sole discretion to assign any function concerning crew hauling to any person.

AWARD

Claim denied.

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 21st day of October 1998.