Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 33148
Docket No. CL-31180
99-3-93-3-234

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-10946) that:

1. Carrier violated the Agreement when they assigned the duties of calling Yardmasters, handling of Yardmaster mark up's and mark's off's to the Trainmaster on duty at Moncrief Yard.

2. Because of the above violation, the Carrier shall now be required to pay Clerks F. K. Goble, L. L. Hamlin, R. F. Bell, C. R. Davis and/or the Senior Available Specialist one (1) day's pay at the appropriate overtime rate for each shift (3 per day) from the date of February 10, 1992, and continuing each day, twenty-four (24) hours per day, until the work is returned to the clerical positions it was removed from."

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.

This claim traces its genesis to the following notice issued at 3:44 P.M. on February 10, 1992, by Jacksonville Terminal Superintendent J. H. Cowling, Jr.:

"TO: ALL JACKSONVILLE TERMINAL YARDMASTERS

Effective immediately, Yardmasters will make all mark off and mark up requests through the Trainmaster on duty in Moncrief Tower.

* * *

No longer will the clerks at Southpoint honor any requests of this nature. The Trainmaster on duty will also call extra Yardmasters for duty when they are needed."

Subsequent to the notice, the described work was removed from Clerks and performed by Trainmasters, resulting in the instant claim filed by the TCU District Chairman on April 9, 1992, in which he maintained the following:

"STATEMENT OF CLAIM:

1. Carrier violated the agreement when they assigned the duties of calling Yardmasters, handling of Yardmaster mark up's and mark off's to the Trainmaster on duty at Moncrief Yard.

2. Because of the above violation the Carrier shall now be required to pay Clerk F.K. Goble, L. L.Hamlin, R.F. Bell, C.R. Davis and or the Senior available Specialist one days pay at the appropriate overtime rate for each shift (3 per day) from the date of February 10, 1992 and continuing each day 24 hours per day until the work is returned to the clerical positions it was removed from.

STATEMENT OF FACT:

Positions 100, 202, 300 and Rel 1 were established at Southpoint under the provisions of CSXT Labor Agreement 6-008-91. These positions were responsible for the calling of Yardmasters at Moncrief Yard, Jacksonville Ramp and Baldwin Yard. Their duties also included handling of Yardmaster mark up's and mark off's. On or about February 10, 1992 Terminal Superintendent J. H. Cowling, Jr. issued instructions removing these duties from the Clerks at Southpoint and assigning these duties to the Trainmaster at Moncrief Yard."

On April 23, 1992 the Carrier denied the claim on its merits, premised upon the following:

"The Organization has long contended that the calling of yardmasters is work that exclusively belongs to the clerical craft. This belief is held even though these functions are performed by various crafts, including yardmasters, over the entire system. Even at Moncrief Yard, yardmaster calling in the past has not been limited exclusively to the clerical craft. In view of the foregoing, your claim is without merit and is denied accordingly. Moreover, the claim of one days pay for each shift at the penalty rate is excessive since no clerical positions have been reduced as a result of these changes."

On August 26, 1992 the Carrier further asserted that the claim was procedurally defective in that the claim was "not continuous," the Organization failed to name a specific Claimant and, arguendo, any violation was de minimis in nature.

Meanwhile, on June 7, 1992, the Organization furnished the Carrier with five statements from four Clerks and one Yardmaster, each asserting that "for many years," the duties of calling, marking up, marking off Yardmasters and calling extra Yardmasters were "exclusively assigned" to clerical employees at Jacksonville, Florida.

The Carrier's reliance on exclusivity of performance on a system-wide basis, a concept of extreme importance under a "general" Scope Rule, is of little consequence and cold comfort under a "positions and work" Scope Rule. Notwithstanding that this

claim is brought under the "positions or work" language of Rule 1 (d) of the Scope Rule, as amended May 7, 1981, the record persuasively demonstrates that prior to this change in work assignment, the described work was performed by TCU Agreement-covered employees to the practical exclusion of others. A myriad of Awards rendered in the industry hold that on the effective date of the revision the Carrier is prohibited from removing positions or work from the Agreement and that all work assigned to a position covered is preserved to the employee even though the work may not be performed exclusively on a system-wide basis. Directly on point, Third Division Award 21933 held: "Under the cited 'positions or work' scope rule, all work performed under the agreement is preserved to the Organization until it is negotiated out."

It cannot seriously be disputed that the effect of the February 10, 1992 memorandum from Terminal Superintendent Cowling was to unilaterally remove work being performed by CSXT/TCU Agreement-covered employees and unilaterally reassign that work to others who are not covered by that Agreement. The Carrier's violation of the express prohibition of Rule 1 (d) of the Scope Rule is plainly proven and Part 1 of the claim therefore is sustained.

The only issue remaining is determination of the appropriate remedy. In Part 2 of the claim the Organization demands damages of 24 hours' pay at the overtime rate for every day from February 10, 1992 forward until the violation is cured. Such a Draconian penalty is supported neither by evidence nor policy. The controlling principles behind an award of damages by this Board for proven Agreement violations call not for punishment, but remediation of past violations and discouragement of future violations. In our considered judgement, the appropriate remedy is payment of one call for each shift on which the claimed work was removed from Agreement-covered employees and performed by strangers to the Agreement. Part 2 of the claim is sustained to that extent commencing with the second shift on February 10, 1992 forward until the violation is cured.

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 25th day of March 1999.