

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 34028
Docket No. CL-34326
00-3-97-3-919

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Springfield Terminal Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11899) that:

I. Claim ST-96-73

The claim is filed on behalf of Mr. A. Ferland, clerk at Rumford and Rileys, Maine. Claim is for eight (8) hours at the rate of straight time, due to the Carrier violating the Agreement by using Non-Scope employees to perform clerical work at Rumford and Rileys, Maine.

Claim commences January 2, 1996, is for each day until corrected. Carrier violated the Agreement when it used Non-Scope employees to perform the following clerical work:

Yard Checking - Non-Scope - Not in Craft and Class
Bills of Lading - Non-Scope - Not in Craft and Class
Preparing Switch Lists - Non-Scope - Not in Craft and Class
Marking out Hazardous Form HM-100 Non-Scope - Not in Craft and Class

Also files HM-100 - Non-Scope - Not in Craft and Class
Also checks and lists in-bound and out-bound trains, checks cars and list them from area siding and finally checks and lists cars in Rumford and Rileys Yard.

Rules violated are, 1-1 Scope, 18-1 Days work and Overtime 18-A1 Calling Procedures, Rule 22 Forty Hour Work Week, Rule 24-1 Basis of Pay/Job Classifications, Rule 27 - Change in Duties, Rule 34 - Use of Other Than

Regularly Assigned Employees, and the Stabilization Agreement of 1965 as amended in October 17, 1984.

Claim is valid and must be paid.

Claim is further made that the first level denial was not in accordance with Rule 38.

II. Claim ST-96-74

The claim is filed on behalf of Mr. P. Keites, clerk at Waterville, Maine. Claim is for eight (8) hours at the rate of straight time, due to the Carrier violating the Agreement by using Non-Scope employees to perform clerical work at Rumford and Rileys, Maine.

Claim commences January 2, 1996, is for each day until corrected. Carrier violated the Agreement when it used Non-Scope employees to perform the following clerical work:

Yard Checking - Non-Scope - Not in Craft and Class
Bills of Lading - Non-Scope - Not in Craft and Class
Preparing Switch Lists - Non-Scope - Not in Craft and Class
Marking out Hazardous Form HM-100 Non-Scope - Not in Craft and Class

Also files HM-100 - Non-Scope - Not in Craft and Class
Also checks and lists in-bound and out-bound trains, checks cars and list them from area siding and finally checks and lists cars in Waterville Yard.

Rules violated are, 1-1 Scope, 18-1 Days work and Overtime 18-A1 Calling Procedures, Rule 22 Forty Hour Work Week, Rule 24-1 Basis of Pay/Job Classifications, Rule 27 - Change in Duties, Rule 34 - Use of Other Than Regularly Assigned Employees, and the Stabilization Agreement of 1965 as amended in October 17, 1984.

Claim is valid and must be paid.

Claim is further made that the first level denial was not in accordance with Rule 38."

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.

The dispute in this matter is similar to that decided by the Board in Third Division Award 34026. That Award shall govern this case. The procedural arguments raised do not change the result.

With respect to the remedy, the same relief fashioned in that Award shall apply, specifically:

"... The remedy shall be for the parties to ascertain how much time was involved in the performance of such work and for the Carrier to make whole the affected employees for those specific amounts of time at the appropriate straight time rate. The fact that Claimant (or another clerk who stood to perform the work) was working during the period covered by the claim does not preclude the awarding of affirmative monetary relief. ... The Board will retain jurisdiction over this matter in the event disputes arise concerning the extent of the monetary relief."

AWARD

Claim sustained in accordance with the Findings.

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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 May, 2000.

SERIAL NO. 393

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 34028

DOCKET NO. CL-34326

NAME OF ORGANIZATION: (Transportation Communications International Union

NAME OF CARRIER: (Springfield Terminal Railway Company

On May 25, 2000, the Board issued a partially sustaining Award in this matter. Because the parties could not agree upon the extent of the remedy, an Interpretation has been requested.

This Award is the companion to Third Division Award 34026 which issued on the same date and for which an Interpretation has also been requested.

In Interpretation No. 1 to Award 34026, we held the following:

“ . . . [W]e find that where members of management improperly performed Clerks' work the Carrier shall be required to compensate the affected Clerk one hour's pay at the applicable straight time rate for each actual demonstrated violation.

* * *

In light of the above findings and the Carrier's assurance to the Organization and the Board that the conduct has now ceased - an assurance which has now been given several times - similar demonstrated violations not paid by the Carrier upon the presentation of a claim will be remedied by the Board in a much more severe fashion than we have in this Interpretation.”

For reasons fully discussed in Interpretation No. 1 to Award 34026, the same shall apply to this Interpretation.

Referee Edwin H. Benn who sat with the Board as a neutral member when Award 34028 was adopted, also participated with the Board in making this Interpretation.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 27th day of October 2004.