

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 34030
Docket No. CL-34349
00-3-97-3-962

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-11901) that:

Claim ST-96-28

Claim for Joseph Cooper, Clerk, Rileys, Maine.

Carrier violated the Agreement when it allowed non-scope employees to perform the following scope work: yard checking, bills of lading, preparing switch lists, making out hazardous Form HM-100, doing mill work, faxing damaged cars, furnishing yard information, (# of cars in yard, loads of paper, janitorial duties, reporting engine conditions) to both Waterville, Maine and North Billerica, Massachusetts.

Rules violated are Clerks Agreement #1, 2, 3, 4, 5, 6, 7 and TCIU Agreement #1 and #2.

Claims are valid and must be paid.

Claim ST-96-29

Claim for Arthur Ferlin, Clerk, Rumford, Maine. Claim is for eight (8) hours at the rate of time and one-half due to carrier violating the Agreement by using non-scope employees to perform clerical work at Rumford, Maine.

Carrier violated the Clerks Agreement, particularly Rules 1, 2, 3, 4, 5, 6 and 7 by using non-scope employees to perform the following: yard checking, non-scope, not in craft and class; bills of lading, non-scope, not in craft of class; preparing switch lists, non-scope, not in craft or class; preparing Hazardous Form HM-100, non-scope, not in craft or class.

Claim is for each Saturday and Sunday commencing April 21, 1995, until corrected.

Claim is valid and must be paid.”

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.

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. 395

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 34030

DOCKET NO. CL-34349

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 34030 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.