

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36738
Docket No. CL-36809
03-3-01-3-505**

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
(CSX Transportation, Inc. (former Louisville and
(Nashville Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12761) that:

- 1. Carrier violated the Agreement on various dates, as noted in Mr. Hutcheson’s decline, by allowing or permitting PTI to haul crews from Howell Yard and transport them to Henderson, Kentucky.**
- 2. As a consequence, Carrier shall now be required to compensate the Claimants (as noted in Mr. Hutcheson’s letter) eight (8) hours’ pay at the time and one-half rate for each violation.”**

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 Organization filed 33 claims (which have been consolidated) asserting that the Carrier improperly assigned crew hauling functions between Howell Yard and Henderson, Kentucky, to an outside contractor (PTI) on various dates in September 1999.

The Scope Rule provides, in pertinent part, that “[p]ositions or work covered under this Rule 1 shall not be removed from such coverage except by agreement between the General Chairman and the Director of Labor Relations.”

Relying upon Public Law Board No. 5782, Award 31, the Board in Third Division Award 36107 found merit to a similar claim concerning the Carrier’s use of PTI to haul crews in and around Rocky Mount, North Carolina, under the same language found in this Scope Rule quoted above. In pertinent part, Award 36107 held:

“The record herein contains substantial evidence that clerical employees historically, regularly, traditionally and routinely hauled train and engine crews at Rocky Mount.

* * *

In sum, the Board concludes that the work of hauling crews at Rocky Mount is covered by Rule 1(d). The Carrier cannot remove the work from TCU represented employees except by agreement.”

The same rationale holds in this case for the hauling of crews between Howell Yard and Henderson, Kentucky. As in Award 36107, the record in this case sufficiently establishes that TCU-represented employees historically, regularly, traditionally, and routinely performed this work and, under the Scope Rule, “[p]ositions or work . . . shall not be removed from such coverage except by agreement between the General Chairman and the Director of Labor Relations.” There was no Agreement to remove the work. The claim therefore has merit.

However, for a remedy the Organization seeks eight hours pay at the time and one-half rate for each violation. In Award 36107, the remedy for each claim was sustained for a call. That will also be the remedy in this case.

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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 22nd day of October 2003.