

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37347
Docket No. CL-37742
05-3-03-3-177

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin 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-12983)
that:

- (1) Carrier violated the Agreement, specifically Rule 1, and the Customer Service Center Agreement, when on April 2, 2002, it allowed Manager Customer Operations R. J. Scarinzi, located at Jacksonville, Florida, to update the railcar order for customer A. K. Steel Corp. at Middletown, Ohio. This was allowed in lieu of allowing this work to be performed by the Clerical employees in the Customer Service Center at Jacksonville, Florida.
- (2) Carrier shall now be required to compensate the Senior Available Employee, D. F. Vollrath, Id. No. 187658, eight (8) hours at time and one-half at the applicable rate of \$150.98, or the applicable rate for the above 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.

Except for the time and date of the incident giving rise to the claim and the number of cars involved, the facts of the instant claim are, with one significant exception, identical to those involved in Third Division Awards 37345 and 37346.

In this claim, the Carrier asserted that the Manager Customer Operations performed the updating of the car order in connection with providing training and/or assistance to a Clerk. The record contains a statement by a Clerk, dated some ten months after the alleged violation, to the effect that she did not recall requesting assistance on the date in question. The record also contains a statement by the Manager Customer Operations, which is confirmed by the same Clerk, to the effect that she could not recall that far back if she did or did not request assistance on April 2, 2002. The competing statement also confirmed that she typically requested such assistance about ten times per day.

Work such as that in dispute here may be performed by a Supervisor if it is an act of providing training assistance to a scope-covered employee. See Award 18 of Public Law Board No. 5782 involving these same parties.

Given the state of the instant record, it is our finding that the Organization failed to satisfy its burden of proof to establish what the true nature of the Manager Customer Operations' work was. As a result, it failed to establish a violation of the Agreement under the circumstances of this record.

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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 19th day of January 2005.