

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37680
Docket No. CL-37371
06-3-02-3-389

The Third Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

(Transportation Communications International Union
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Seaboard Coast
(Line Railroad Company)

STATEMENT OF CLAIM:

- “1. The CSX Transportation violated the Agreement(s) at Waycross, Georgia, on the dates as outlined in Attachment ‘A’ of this claim, beginning on dates from August 7 through September 21, 2001, after it had abolished all clean-out track positions at Waycross, Georgia and subsequently allowed members not covered under the TCU Clerical Agreement to perform the duties of cleaning cars at Waycross, Georgia, which is a duty and function historically assigned to and performed by the Clerks at Waycross, Georgia.
2. Because of the aforementioned violation(s), the Carrier shall now be required to return the cleaning of the cars to the Clerical craft at Waycross, Georgia, and compensate the Senior Available employee(s), Guaranteed Extra Board or unassigned in preference, eight (8) hours at the applicable rate, be it overtime or straight time, for each date that the Carrier allowed the non-covered employees to clean cars, as outlined in Attachment ‘A’ of this claim. A perusal of the Carrier’s records shall determine the ‘available’ employees outlined in the claim.”

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.

As Third Party in Interest, the Brotherhood Railway Carmen Division of TCU was advised of the pendency of this dispute, but chose not to file a Submission with the Board.

These claims address the same issues as those considered concurrently by the Board in Third Division Award 37679 involving these parties, differing solely in respect to the dates of the alleged violations. That dispute involved claims as noted; these claims address alleged violations occurring on certain dates in August and September 2001.

In Award 37679 we concluded that with respect to claims spanning the period from January 13 through April 9, 2001 it was practically difficult and logically inconsistent for the Carrier to dispute the violations asserted in the face of its local level management admission, however qualified, that "there is basis to your claims."

In the case of the dates comprehended by the claims in this dispute the Carrier is not faced with that compromising concession. On the contrary, local management here replied to the Organization's 18 claims filed on September 29, 2001 with a firm denial of any violation, indicating that it had researched its records, interviewed the principals and concluded that the claims were without merit. The November 20, 2001 letter from W. D. Smith, II, Regional Director Administration Southern Region, addressed to District Chairman R. B. Casey states in part as follows:

"Our investigation into this matter has revealed that your claim(s) on the date(s) listed above are without merit. Carmen Colley, Snyder, Thrift, and Barber were interviewed [and] the records were researched for the dates and car numbers you provided. Of the 115 cars listed, 91 cars received repairs. Only an insignificant amount of trash consistent with making interior repairs was removed from any one of these cars and all received interior caulking and painting. As always, there are

billing repair records available to verify repairs made. Seven of the cars were forwarded to a car cleaning facility. No trash was removed from these cars. Thirteen cars were placed in Heavy Bad Order. No trash was removed and no repairs were made to these cars. Two of the cars were forwarded to another repair location for Interior Bulkhead repairs. No trash was removed from these cars. Also, two car numbers on the list were incorrect. . . .”

Mr. Smith added that Carman Colley did not work on the Shipper Reject Line during the period in question and Carmen Snyder, Roy, Thrift and Barber indicated that to the best of their knowledge the car numbers were supplied by a Supply & Services Clerk who simply recorded the number of every car that was placed on the “Shipper Reject Track” without knowing what would be worked or rejected.

The Board carefully reviewed the record with particular scrutiny of the Organization’s evidence and argument and finds no compelling proof supporting the allegations made in the claims. Nor were any of the Carrier’s contentions refuted on the property. Accordingly, the claim must be denied.

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 30th day of January 2006.