Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37800
Docket No. CL-37045
06-3-02-3-9

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 Seaboard Coast
(Line Railroad)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Union that:

(Carrier File 6(01-0156)
(TCU File 1.2577(18)SCL)

1. Carrier violated the Agreement(s) on October 29, 2000, when it allowed U 4002 to update class codes on train/track/cut Y09 SN 7730 at Tampa, Florida. This violation was performed in lieu of allowing this work to be performed by Clerical employes in the Customer Service Center at Jacksonville, Florida.

2. Carrier shall now compensate the Senior Available Employe, extra or unassigned in preference, eight (8) hours at the applicable rate of $147.14 or the punitive rate, if applicable, 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.

As Third Party in Interest, the United Transportation Union - Yardmasters Department (UTU) was advised of the pendency of this dispute and chose to file a Submission with the Board.

Aside from the Labor and Carrier representatives from the Board, also present at the Referee Hearing in this matter were representatives of the Organization, the Carrier and the UTU. As a result, extensive presentations by the Organization, the Carrier and the UTU were made to the Board.

In this claim, the Organization alleges that the Carrier assigned an employee at Tampa, Florida, to update a class code for a freight car using the YSBO/YSUC function rather than assigning that work to a Customer Service Representative ("CSR") at the Customer Service Center ("CSC") in Jacksonville, Florida.

The background for this claim is set forth in Third Division Awards 37227 and 37760.

As more fully set forth in Third Division Award 37760, the Board has jurisdiction to resolve this claim.

The record in this case shows that the disputed work: (1) was performed by someone other than a CSR at the CSC; (2) was performed by a Clerk at Tampa, Florida, prior to the 1991 Implementing Agreement; and (3) was performed by a CSR at the CSC after the 1991 Implementing Agreement took effect. Under the three-part test set forth in Third Division Award 37227, the Organization has shown that the work was transferred from Tampa to the CSC under the terms of the 1991 Implementing Agreement and was later improperly performed by someone other than a CSR at the CSC in violation of the parties' Collective Bargaining Agreements.

For reasons stated in Third Division Award 37760, arguments made by the UTU do not change the result.

Under the rationale stated in Third Division Award 37227, this claim shall be sustained at the $15.00 requirement.

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 21st day of June 2006.

CARRIER MEMBERS' DISSENT

TO

THIRD DIVISION AWARDS 37781, 37782, 37783, 37784, 37785, 37786, 37787, 37788, 37789, 37790, 37799, 37800, 37801, 37802, 37803

DOCKETS CL-37043, CL-37052, CL-37073, CL-37076, CL-37078, CL-37080, CL-37081, CL-37082, CL-37091, CL-37096, CL-37036, CL-37045, CL-37047, CL-37055, CL-37063

(Referee Edwin H. Benn)

These Awards involve the performance of various computer functions, including adjusting yard inventory, at field locations by Clerks and Yardmasters.

We dissent on the ground that the Board lacks the subject matter jurisdiction to decide the claims. For the sake of brevity, our Dissent to Third Division Awards 37760 through 37765 is incorporated herein by reference.

Michael C. Lesnik
Michael C. Lesnik

Martin W. Fingerhut
Martin W. Fingerhut

Bjarne R. Henderson
Bjarne R. Henderson

John P. Lange
John P. Lange

June 21, 2006

LABOR MEMBER'S RESPONSE

TO

CARRIER MEMBER'S DISSENT

TO

THIRD DIVISION AWARDS 37781, 37782 37783, 37784, 37785, 37786, 37787,37788,37789, 37790, 37799, 37800, 37800, 37801, 37802, 37803

DOCKETS CL-37043, CL-37052, CL-37073, CL-37076, CL-37078, CL-37080, CL-37081, CL-37082, CL-37091, CL-37096, CL-37036, CL-37045, CL-37047, CL-37055, CL-37063

(Referee Edwin H. Benn)

The Carrier Member's Dissent to the aforementioned Awards is a reiteration of its previous Dissent involving the performance of computer functions at field locations by non-covered employees. The redundant Dissent is still without substance and adds no value. Its only saving grace is its brevity.

Contrary to the Carrier's assertions and illogical arguments the history of these disputes reflects the fact that the Carrier has repeatedly lost identical cases before four different distinguished arbitrators. It is time for the Carrier to accept its loss, pay the grievances and cease violating the Collective Bargaining Agreement.

All of the Awards listed above are correct and precedential. The Carrier Member's Dissent does <u>not</u> detract from their validity.

Respectfully submitted,

William R. Miller

William R. Miller
TCU Labor Member
June 21, 2006