

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37839
Docket No. CL-37084
06-3-02-3-45**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(CSX Transportation, Inc. (former Seaboard
(Coast Line Railroad)

PARTIES TO DISPUTE: (

(Transportation Communications International Union

STATEMENT OF CLAIM:

“Claim of the System Committee of the Union that:

(Carrier File 6(00-1469)
(TCU File 1.2497(18)SCL)

1. Carrier violated the Agreement on September 25, 2000, when it allowed Yardmaster C. E. Aquaoro to issue work order No. 389633 on train Y12825 at Louisville, Kentucky. This violation was performed in lieu of allowing this work to be performed by Clerical employees in the Customer Service Center at Jacksonville, Florida.
2. Carrier shall now compensate the Senior Available Employee, 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.

(Carrier File 6(00-1470)
(TCU File 1.2496(18)SCL)

1. Carrier violated the Agreement on September 17, 2000, when it allowed Yardmaster M. D. Davidson to issue work order No. 370611 on train Y12817 at Louisville, Kentucky. This violation was performed in lieu of allowing this work to be performed by

Clerical employees in the Customer Service Center at Jacksonville, Florida.

2. Carrier shall now compensate the Senior Available Employee, 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.

(Carrier File 6(01-0061)
(TCU File 1.2536(18)SCL)

1. Carrier violated the Agreement(s) on September 27, 2000, when it allowed Yardmaster M. D. Davidson to issue work order No. 394609 on train Y12827 at Louisville, Kentucky. This violation was performed in lieu of allowing this work to be performed by Clerical employees in the Customer Service Center at Jacksonville, Florida.
2. Carrier shall now compensate the Senior Available Employee, 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 these claims, the Organization alleges that the Carrier assigned Yardmasters at Louisville, Kentucky, to issue work orders on trains rather than assigning that work to a Customer Service Representative ("CSR") at the Customer Service Center ("CSC") in Jacksonville, Florida. The record reveals that the specific computer function involved for issuing the disputed work orders is WOIS.

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 Louisville, Kentucky, 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 Louisville 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.

The Organization presented four statements from Clerks who worked at Louisville and were transferred to the CSC. Those statements show that WOIS was performed by Clerks at Louisville and, after their transfer to the CSC, was performed by them at the CSC. Notwithstanding citation to other authority concerning the Yardmasters' performance of work, under the three-part test utilized in these cases, the Organization met its burden in this case.

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, these claims 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 1st day of August 2006.

**CARRIER MEMBERS' DISSENT
TO
THIRD DIVISION AWARDS 37836, 37837, 37838, 37839, 37840
DOCKETS CL-37040, CL-37060, CL-37079, CL-37084, CL-37097**

(Referee Edwin H. Benn)

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

Awards 37836 and 37837 denied the claims presented therein. The claims that culminated in Awards 37838, 37839 and 37840 were sustained in accordance with the Findings. Although two of the five Awards decided the involved claims in favor of the Carrier, we nevertheless dissent on the ground that the Board lacks the subject matter jurisdiction to decide any of these 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

August 7, 2006