

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37933
Docket No. CL-37051
06-3-02-3-15

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 Company)

PARTIES TO DISPUTE: (

(Transportation Communications International Union

STATEMENT OF CLAIM:

“(Carrier File 6(01-0074)
(TCU File 1.2523(18)SCL)

1. Carrier violated the Agreement on August 1, 2000, when it allowed the General Clerks at Flomaton, Alabama, to adjust the yard inventory tracks and partially complete work orders on the second shift at Flomaton, Alabama, in lieu of allowing Clerk C. L. Pazmino to perform this work at the Customer Service Center at Jacksonville, Florida.
2. Carrier shall now be required to compensate Clerk Pazmino, ID 237871, eight (8) hours at time and one-half his current rate of \$147.14, plus any general wage increase, for each day Clerk Pazmino was not properly called to perform this work, and continuing until this violation is stopped.”

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.

In this claim, the Organization alleges that the Carrier assigned Clerks at Flomaton, Alabama, to make yard inventory adjustments and partially complete work orders 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 Flomaton, Alabama, 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 Flomaton 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.

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

However, the scope of the remedy is limited in this case. The Carrier served a New York Dock notice dated June 30 transferring certain work covered by the claim back to Flomaton effective September 30, 2000. Therefore, the claim period for the remedy in this matter shall only be from August 1 through September 30, 2000. Further, any other claims remedied from other matters decided by the Board involving claims at Flomaton for the disputed work shall be excluded from the remedy in this case — i.e., there shall be no duplication of remedies from claims decided at Flomaton by other Awards. Further, there appears to be a question over

how transactions are to be computed for purposes of the remedy. If multiple cars are handled in one transaction, the \$15.00 remedy applies to the transaction and not to the number of cars - i.e., \$15.00 per transaction irrespective of the number of cars involved.

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 19th day of September 2006.

**CARRIER MEMBERS' DISSENT
TO**

**THIRD DIVISION AWARDS 37929, 37930, 37931, 37932, 37933
37934, 37935, 37936, 37937, 37938, 38939, 37940, 37941, 37942**

**DOCKETS CL-37037, CL-37039, CL-37044, CL-37049, CL-37051
CL-37056, CL-37057, CL-37061, CL-37064, CL-37071, CL-37072, CL-37077,
CL-37090, CL-37094**

(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 37932, 37935, 37938 and 37941 denied the claims presented therein. The claims that culminated in Awards 37929, 37930, 37931, 37933, 37934, 37936, 37937, 37939, 37940, and 37942 were sustained in accordance with the Findings. Although four of the 14 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

September 19, 2006