

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37967
Docket No. CL-37092
06-3-02-3-57

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

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

STATEMENT OF CLAIM:

“Carrier File 6(01-0346) TCU File 1.2620(18)SCL

1. Carrier violated the terms of the Agreement(s) on November 6, 2001, when it allowed Yardmasters to make Yard Inventory Adjustments (YSIA) on train/track/cut at Danville, Illinois. 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 for the above violation.

Carrier File 6(01-0486) TCU File 1.2701(18)SCL

1. Carrier violated the terms of the Agreement, specifically Rule 1 of the General Agreement, on November 27, 2000, when it allowed Yardmaster V. L. Sheets located at Danville, Illinois, to adjust the Yard inventory tracks using the computer function YSIA. This was allowed in lieu of allowing this work to be performed by the Clerical employees in the Customer Service Center at Jacksonville, Florida, in compliance with CSXT Labor Agreement No. 6-008-91.

2. Carrier shall now be required to compensate the Senior Available Employee, extra or unassigned in preference, eight (8) hours' pay at time and one-half the applicable rate of \$149.30 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.

In these claims, the Organization alleges that the Carrier assigned Yardmasters at Danville, Illinois, to perform the YSIA function to make yard inventory adjustments 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.

In order to prevail in this case and under the three-part test set forth in Third Division Award 37227, the Organization must demonstrate that the disputed work: (1) was performed by someone other than a CSR at the CSC; (2) was performed by a Clerk at Danville, Illinois, prior to the 1991 Implementing Agreement; and (3) was

performed by a CSR at the CSC after the 1991 Implementing Agreement took effect. There is no evidence in this record to support that needed showing for the Organization to meet the three-part test. There are no statements from employees asserting that such work was performed at Danville before and after the crucial dates.

As in Third Division Award 37941, the specific evidence relied upon by the Organization consists only of a letter (here dated February 21, 2001) from the Carrier stating that "... [p]rior to this claim the Yardmaster or field clerk would fax the data to CSC for input. The new technology allows the Yardmaster or field clerk access directly to the data." As the Carrier argues and as the Board stated in Third Division Award 37941:

"That is not enough to meet the Organization's burden under the three-part test. While inferences can be drawn from the submitted letter, without more detail concerning the dates and specifics of the work performed at New Castle such as we have seen in the other cases, we are unable to satisfactorily conclude in this case that the Organization met its burden under the three-part test. The claim will therefore be denied."

For the same reasons, these claims 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 25th day of October 2006.