

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37968
Docket No. CL-37095
06-3-02-3-53

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(01-0119) TCU File 1.2552(18)SCL

1. Carrier violated the Agreement on the dates noted in each claim when it allowed the on-duty Yardmasters (as specifically named in each claim) at Kingsport, Tennessee, to complete switchlists resulting in the adjustment of the Yard inventory at Kingsport, Tennessee. This was done in lieu of allowing Clerk P. B. Parsons to perform this work at the Customer Service Center at Jacksonville, Florida.
2. Carrier shall now be required to compensate Clerk Parsons, ID 181868, eight (8) hours' pay at time and one-half his current rate of \$147.14, for the above violation.
3. Carrier shall also be required to make available their records to verify this violation.

Carrier File 6(01-0120) TCU File 1.2554(18)SCL

1. Carrier violated the Agreement on the dates noted in each claim when it allowed the on-duty Yardmasters (as specifically named in each claim) at Kingsport, Tennessee, to complete switchlists resulting in the adjustment of the Yard inventory at

Kingsport, Tennessee. This was done in lieu of allowing Clerk P. B. Parsons to perform this work at the Customer Service Center at Jacksonville, Florida.

2. Carrier shall now be required to compensate Clerk Parsons, ID 181868, eight (8) hours' pay at time and one-half his current rate of \$147.14 for the above violation.
3. Carrier shall also be required to make available their records to verify this violation.

Carrier File 6(01-0121)

TCU File 1.2555(18)SCL

1. Carrier violated the Agreement on the dates noted in each claim when it allowed the on-duty Yardmasters (as specifically named in each claim) at Kingsport, Tennessee, to complete switchlists resulting in the adjustment of the Yard inventory at Kingsport, Tennessee. This was done in lieu of allowing Clerk P. B. Parsons to perform this work at the Customer Service Center at Jacksonville, Florida.
2. Carrier shall now be required to compensate Clerk Parsons, ID 181868, eight (8) hours' pay at time and one-half his current rate of \$147.14 for the above violation.
3. Carrier shall also be required to make available their records to verify this violation.

Carrier File 6(01-0127)

TCU File 1.2568(18)SCL

1. Carrier violated the Agreement on the dates noted in each claim when it allowed the on-duty Yardmasters (as specifically named in each claim) at Kingsport, Tennessee, to complete switchlists resulting in the adjustment of the Yard inventory at Kingsport, Tennessee. This was done in lieu of allowing Clerk

P. B. Parsons to perform this work at the Customer Service Center at Jacksonville, Florida.

2. Carrier shall now be required to compensate Clerk Parsons, ID 181868, eight (8) hours' pay at time and one-half his current rate of \$147.14 for the above violations.
3. Carrier shall also be required to make available its records to verify this violation.

Carrier File 6(01-0128)

TCU File 1.2569(18)SCL

1. Carrier violated the Agreement on the dates noted in each claim when it allowed the on-duty Yardmasters (as specifically named in each claim) at Kingsport, Tennessee, to complete switchlists resulting in the adjustment of the Yard inventory at Kingsport, Tennessee. This was done in lieu of allowing Clerk P. B. Parsons to perform this work at the Customer Service Center at Jacksonville, Florida.
2. Carrier shall now be required to compensate Clerk Parsons, ID 181868, eight (8) hours' pay at time and one-half his current rate of \$147.14 for the above violations.
3. Carrier shall also be required to make available its records to verify this 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 Kingsport, Tennessee, to perform yard inventory adjustments and complete switchlists 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 Kingsport, Tennessee, 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 Kingsport before and after the crucial dates.

The specific evidence relied upon by the Organization in support of these claims is reference to the attachment to the Carrier's notice of October 25, 1990 which specifies Kingsport as one of the locations affected by the Carrier's consolidation of work into the CSC. The specific information in that attachment

shows that the Carrier estimated abolishing 17 positions at Kingsport. However, that attachment also shows that the Carrier estimated that it would retain six positions at Kingsport. Most significantly, with respect to the Carrier's estimation of the number of positions to be established at the CSC, there are no specific indications in the attachment to the Carrier's notice of October 25, 1990 concerning the positions and work performed at Kingsport which were going to be moved to the CSC. Given the lack of evidence showing that the specific work in dispute was transferred from Kingsport to the CSC, the Organization's sole reliance upon the attachment to the Carrier's notice of October 25, 1990 is not enough to meet the Organization's burden.

We are cognizant of the fact that in other similar disputes before the Board concerning transfer of work to the CSC and the subsequent performance of that work by employees other than CSRs at the CSC, the Organization relied upon the attachment to the Carrier's notice of October 25, 1990 and sustaining Awards were issued. However, in those cases, not only did the Organization rely upon the attachment to the Carrier's notice of October 25, 1990, but there were also employee statements presented to the Board specifically concerning the locations in dispute and showing that the three-part test set forth in Third Division Award 37227 was met. See e.g., Third Division Awards 37800, 37801, 37931, 37934 and 37964. Similar employee statements are not present in this record concerning Kingsport.

While inferences can be drawn from the attachment to the Carrier's notice of October 25, 1990, without more detail concerning the dates and specifics of the work performed at Kingsport 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. These claims will therefore be denied.

AWARD

Claim denied.

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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.