

PUBLIC LAW BOARD NO. 3545

Award No. 42

Case No. 42

PARTIES
TO DISPUTE

Brotherhood of Railway, Airline and Steamship
Clerks, Freight Handlers, Express and Station
Employees

and

CSX Transportation, Inc.

STATEMENT
OF CLAIM

- "1. Carrier violated the Agreement when it allowed an outside firm/shipper, Union Camp Corporation, to perform demurrage and car placement information for cars placed and released for the Seaboard System Railroad at Montgomery, Alabama. .
2. Carrier shall compensate the senior employee extra in preference in the amount of \$102.32, utility rate of pay, from October 12, 1985 and on a daily basis until violation is corrected."

FINDINGS:

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-436 and has jurisdiction of the parties and the subject matter.

In the summer of 1983 Carrier notified its employees of its intent to purchase 10 miles of trackage rights from the Illinois Central Gulf Railroad extending from Montgomery, Alabama, to Augusta Creek. On this stretch of track was located Union Camp Corporation's paper mill as well as some twenty other shippers. Subsequently by letter dated November 4, 1985, Carrier advised the organization how the clerical work being performed by

the ICG employees would be performed if the sale was consummated. Several months later, on February 24, 1984, the parties executed an Implementing Agreement in accordance with the Labor Protective Conditions provided for by the "New York Dock" conditions (Article I, Section 4). Carrier's November letter indicated a listing of ICG positions and the duties its employees would perform when the sale was completed. Carrier then on October 9, 1985 started operations at Union Camp and some three weeks later (on October 22, 1985) the Petitioner became aware of certain actions which it considered to be violations of the Agreement.

According to Petitioner, Carrier had entered into an Agreement with Union Camp to change the method for handling demurrage reports. Prior to the acquisition of the ten-mile section of track, ICG demurrage clerks had utilized a form furnished by the conductor to maintain a record of cars pulled from and placed into Union Camp. At the end of each month, the demurrage clerk would use these records for purposes of preparing a demurrage bill for any monies due. Starting on October 9, 1985, Carrier's demurrage clerk was notified not to maintain a demurrage record but to use Union Camp Company's demurrage report generated by computer for purposes of billing and all other purposes. Petitioner insists that the actions and activities involved in

the maintaining of records for demurrage purposes is work coming under the Scope Rule and cannot be removed except by agreement. Previously Carrier, by its letter of November 4, 1983, had advised the organization that the demurrage work in question would be performed by a chief rate clerk, cashier, and two other clerks. Furthermore the work in question had been performed previously by ICG clerical employees and never by Union Camp employees. The Organization insists that Carrier had no right to contract out unilaterally the work in question to Union Camp and the work should have been reserved to employees covered by the Agreement as provided by the Implementing Agreement.

Carrier takes the position initially that the claim was procedurally defective and should be dismissed. Carrier notes that the claim was filed on December 10, 1985, whereas the action of changing the method for handling demurrage was instituted by Carrier on October 9, 1985. Thus, there was approximately a 63-day gap between the occurrence and the filing which was beyond the 60 days provided for in Rule 36. The Carrier argues further that the action involved was a particular act and not a continuing claim as alleged by the Organization. In addition to the procedural question, Carrier insists that there was no evidence to support Petitioner's claim that Carrier violated the Agreement. The only difference in the operation, according to

Carrier, was the fact that the demurrage clerk is currently using the computerized listing to generate a demurrage bill for Union Camp rather than using the conductor's placed and pulled records. Therefore, it is the computerized listing prepared by Union Camp which is the only major change.

In furtherance of its position, Carrier also argues that the work of maintaining demurrage records for Union Camp Corporation is no longer required by Carrier and has properly been eliminated. Carrier argues that the work of compiling the demurrage record from the conductor's report of car handling is no longer required in order to generate a demurrage bill. Carrier's position is that the work has been eliminated and not transferred to Union Camp.

The essence of this dispute is whether the work in question has been removed or eliminated. It should be noted, prior to dealing with that question, however, that Carrier's contention with respect to the untimeliness of the claim is without merit. Petitioner had a right to determine what the facts were as to the handling of demurrage before filing its claim. The evidence does not refute its assertion that such information was not available to it until October 22, and therefore the claim was filed within the prescribed 30-day period.

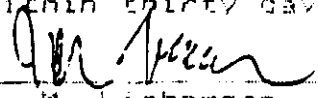
With respect to the fundamental issue, it is apparent from the facts even as related by Carrier that the work in question was not eliminated but rather removed from the jurisdiction of employees of Carrier. Such action was a clear violation of both the letter and intent of the New York Dock conditions as well as those in the Implementing Agreement. The abrogation of the New York Dock conditions by Carrier's unilateral action in removing the work from the jurisdiction of its clerical employees is sufficient to move this Board to sustain the claim. Until and unless there is agreement with respect to elimination of this work, the employees covered by this Agreement have a right to the work.

AWARD

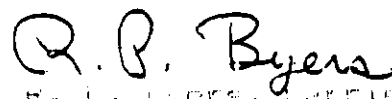
Claim sustained; employees entitled to the work shall be paid a 1-hour call per day from the time the work was removed from their jurisdiction (October 17, 1988) until the violation is corrected.

ORDER

Carrier will comply with the award herein within thirty days of the date hereof.


I. M. Lieberman
Neutral-Chairman


L. E. Boshier, Employee Member


R. B. Byers, Carrier Member

Jacksonville, Florida

 Feb 11, 1988