

The Third Division consisted of the regular members and in addition Referee Hugh G. Duffy when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union  
(CSX Transportation, Inc. (formerly The Seaboard Coastline Railroad Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10549) that:

1. Carrier violated the Agreement on November 17, 1987, when it removed work from the craft covered under the current working Agreement and assigned said duties to an outside party.

2. Because of the above violation, Carrier shall now compensate the Senior Available Crew Dispatcher at Florence, South Carolina one (1) day's pay at the applicable rate, seven (7) days a week, three (3) shifts a day, to begin sixty (60) days prior to date claim is filed, and shall be on a continuous basis until claim is settled and work is returned to rightful parties."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

This is a Scope Rule claim in which the relevant facts are not in dispute. Prior to November 17, 1987, Crew Dispatchers at Florence, South Carolina, called crews staying at the Red Carpet Inn in Columbia, South Carolina, by going through the Motel Operator and talking to them in their individual rooms while the Operator stayed on the line. On that date, when the Motel made operational changes which prevented the Operator from staying on the line after the Crew Dispatcher was connected with an individual employee, the Carrier issued a bulletin requiring Crew Dispatchers to give the calling information to the Motel Clerk, who would then relay the information to the individual crew members.

The Carrier states that this was done in order to avoid making a separate long distance telephone call to the motel for each crew member, and cited numerous other locations where Crew Dispatchers give calls to motel operators for relaying to crew members.

The Organization filed a claim alleging that this action constituted a removal of work previously performed by clerical employees and assignment of the work to an outside party, thus violating Rule 1 of the Agreement, which is a "work and position" Scope Rule in effect since May 7, 1981.

The Board has carefully reviewed the evidence and has considered the arguments presented by the Organization. After these deliberations, we conclude that the claim must fail because substantive statements made by the Carrier were not refuted during the handling of the claim on the property.

In his denial letter of February 3, 1988, the Trainmaster stated:

"The procedure being utilized in Columbia, S.C. has long been an established procedure, both on this property and on other properties of this company and have been utilized for years in calling crews."

This position was repeated by the Director of Labor Relations in his letter dated August 6, 1990. The Organization, on the property, did not refute the Carrier on this point.


We thus follow well-established precedent that when material statements are made by one party and not denied by the other party, thereby leaving the contentions standing as un rebutted, the material statements are accepted as fact, particularly when there is both the opportunity and the time to rebut the contention.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 21st day of October 1992.