Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31590
Docket No. CL-30638
96-3-92-3-453

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International
(Union
(CSX Transportation, Inc. (former Chesapeake
(and Ohio Railway Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-10825) that:

CLAIM NO. 1

1. The Carrier violated the terms of the General Agreement and Memoranda thereto when it utilized the services of carmen to perform the duties of the Section Storekeeper in the Car Shop Storeroom on May 2, 1988, in violation of Rules 1, 35 and others; and,

2. The Carrier shall now arrange to allow Section Storekeeper D. W. Whitford, eight (8) hours at the punitive rate of $109.06 per day for the above date.

CLAIM NO. 2

1. The Carrier violated the terms of the General Agreement and Memoranda thereto when it utilized the services of carmen to perform the duties of the Section Storekeeper in the Car Shop Storeroom on August 1, 1988, in violation of Rules 1, 35 and others; and,

2. The Carrier shall now arrange to allow Section Storekeeper D. W. Whitford, eight (8) hours at the punitive rate of $109.06 per day for the above date."

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 waived right of appearance of hearing thereon.

Claimant is a Section Storekeeper, A-289, regularly assigned 7:00 A.M. to 3:30 P.M., Tuesday through Saturday, rest days of Sunday and Monday.

On the two claim dates, Carrier utilized Carmen at the Car Shop to unload freight from trucks. The Organization protested, alleging Carrier had violated Rules 1 and 35 by utilizing Carmen to perform work assigned "exclusively" to the Section Storekeeper at Cincinnati, Ohio. The Organization asserted that on a five day position, Claimant should have been called on his rest day to perform the aforementioned duties.

Carrier denied the claim maintaining that Claimant did not have "exclusive" rights to the work at issue. With respect to the first claim date, Carrier asserted that: "The trucks needed to be quickly unloaded direct to the carmen who were making emergency repairs to derailed customer loaded cars." Regarding the second date in dispute, Carrier alleges that it "investigated the matter and could not confirm that such an incident occurred."

The Organization responded to Carrier's denial maintaining that the material "was in inventory and not for emergency use by the same carmen who unloaded it."

The facts relative to both of these claims are virtually identical, and they were combined during handling on the property.

A review of the "Statements Showing Disposition of Duties" clearly shows that the checking, maintaining and unloading of inventory stock in Store Departments, at Queensgate Yard and other locations in the Cincinnati area, are duties regularly assigned to the Section Storekeeper in the Car Shop Storeroom. Carrier did not dispute the fact that on May 2, 1988 Carmen unloaded the trucks, but justified its actions by an assertion of "emergency." However, Carrier did not carry its burden of proving, through a preponderance of record evidence, that a bona fide emergency actually required it to bypass the TCU Agreement reservation of this work to the Section Storekeeper. Carrier's assertion that it "investigated the matter (on August 1, 1988) and could not confirm that such an incident occurred," is an insufficient defense under the circumstances.

Claimant normally performed the duties in dispute. There is no persuasive evidence that an "emergency" precluded calling him to perform it on claim dates, and he should have been called. Further, Claimant would have been entitled to compensation at the overtime rate because the claim dates were his regular rest days. Based on the foregoing, this claim is sustained.

AWARD

Claim sustained.

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 29th day of August 1996.