

The Second Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That Carrier violated the controlling Agreement, specifically, Rule 28 of the Shop Crafts' Agreement, when on the date of September 23, 1979, two (2) carmen were ordered from Grafton, W. Va. to change wheels on loaded rail car # 187, at the Parkersburg, W. Va. terminal, Grafton, W. Va. and Parkersburg, W. Va. being two entirely separate seniority districts.
2. That Carrier has significantly and knowingly altered the original claim pertaining to the herein referred to incident, thereby subjecting them to impropriety with regard to the handling of this claim on the property.
3. That Carrier be ordered to compensate Claimant, Gary L. Hoff for losses arising account of this incident, for a total of six (6) hours pay at the time and one-half rate, on the date of September 23, 1979.

Findings:

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

The carrier or carriers and the employe or employees 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 dispute involves conflicting contentions by the Organization and Carrier as to procedural and substantive aspects of the instant claim.

The Organization maintains that on September 23, 1979, Carrier violated Rule 28 of the Agreement by permitting Carmen from Grafton, West Virginia to change wheels on loaded rail car #187 at its Parkersburg, West Virginia terminal.

According to the Organization, its claim in this dispute, was filed by Local Chairman R. Martin on November 21, 1979. As the Organization views it, M. W. Phebus, Manager - Car Department, significantly altered its claim on December 21, 1979 when he rejected it. On that day, Manager Phebus replied to Local Chairman Martin. He indicated that the claim had been filed on November 12, 1979 and that it concerned events of October 23, 1979, and not September 23, 1979.

Thus, the Organization reasons that Carrier has significantly altered the claim in this dispute. Therefore, the Organization concludes that the claim should be sustained on the basis of impropriety.

In addition, the Organization argues that the claim should be sustained on its merits. The Organization points out that Grafton and Parkersburg are in two separate seniority districts. It notes that Rule 28 provides, in relevant part that, "Seniority of employees in each craft covered by this agreement shall be confined to the point employed...." According to the Organization, Claimant G. L. Hoff, of Parkersburg, was available for call on September 23, 1979. Thus, the Organization concludes that Carrier violated Rule 28 when it required Carmen from the Grafton seniority district to perform work in the Parkersburg seniority district instead of Claimant.

Carrier, on the other hand, alleges that it is the Organization who has significantly altered the original claim. It contends that it received a claim from the Organization dated November 12, 1979. That claim referred to an incident which occurred on October 23, 1979. In Carrier's view, it properly denied this claim. However, it argues, the Organization's appeal of the denial, on February 14, 1980, referred to a new claim stating the date of the occurrence as September 23, 1979. Thus, Carrier maintains that it is the Organization which has altered its claim, and not Carrier.

Additionally, Carrier notes that it denied the Organization's claim on December 12, 1979. However, it received the Organization's appeal of that denial on February 20, 1980, sixty-one days thereafter. Rule 33 requires that appeals must be taken within 60 days from "receipt of notice of disallowance." Accordingly, Carrier concludes that the Organization processed its appeal in an untimely manner.

Finally, Carrier insists that the claim should be dismissed on its merits. It contends that employees at Parkersburg did not possess the necessary experience to perform the disputed work. Therefore, it argues that it had to send Carmen from Grafton, who had previously performed such work, to instruct Parkersburg Carmen in replacing the car's wheels. Accordingly, Carrier asks that the claim be denied on its merits as well as for procedural reasons.

It is clear that this claim must fail. The record evidence reveals that Local Chairman Martin initiated this claim with Carrier via letter dated November 12, 1979. The letter states that it is a time claim for G. L. Hoff account of certain Carmen performing work in Parkersburg terminal on "October 23, 1979." Carrier denied this claim on December 21, 1979. The Organization appealed Carrier's denial on February 14, 1980. However, its appeal refers to a claim submitted "November 21, 1979" relating to work performed on "September 23, 1979." Thus, on February 14, 1980, the Organization significantly alters its initial claim.

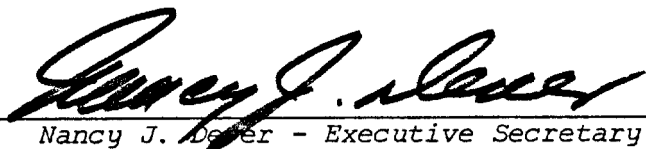
Such alteration mandates that the claim be dismissed. Section 3, First (i) of the Railway Labor Act requires that a claim must "be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes, ..." In Award No. 6657, Claimant sought to amend a claim seeking a \$.12 per hour differential to one for a \$.06 per hour differential. This Board concluded that the amended claim was "substantially at variance" with the initial one. Here, the Organization has amended its claim to refer to a completely different date of occurrence. Similarly, we, too, conclude that such change substantially alters the original claim. Thus, we find that the dispute has not been handled in "the usual manner" on the property. Accordingly, the claim must fall on this ground alone.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: _____


Nancy J. Defer - Executive Secretary

Dated at Chicago, Illinois, this 16th day of May, 1984