

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

Parties to Dispute: (System Federation No. 16, Railway Employees'
 (Department, A. F. of L. - C.I. O.
 ((Carmen)
 (Norfolk and Western Railway Company

Dispute: Claim of Employes:

1. That carrier violated the current working agreement when it allowed supervision to rerail freight car in train yard at Cleveland, Ohio on May 7, 1975.
2. That carrier violated Article V, National Agreement dated August 21, 1954 and Second 3 (i) of the Railway Labor Act during the processing of the claim on the property.
3. That accordingly, carrier be ordered to compensate Carmen L. Thomas and H. Wilk four (4) hours each at the straight time rate of pay for May 7, 1975.

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 employes involved in this dispute are respectively carrier and employe 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 claim involves the assertion that Carrier violated Rule 125 and related past practice by allowing a Trainmaster and a Yardmaster to perform work rerailing a car at East 55th Street Yard, Cleveland, Ohio. Before we can look at that merits question, however, we must deal with countervailing procedural allegations by the parties relative to the so-called Time Limits on Claims Rule, Article V of the National Agreement dated August 21, 1954. In that connection, the Organization maintains that the claim must be "allowed as presented" because allegedly it was not answered within 60 days of filing date and also because allegedly it was answered by the "wrong" Carrier official. For its part, Carrier denies that any specific official must answer a claim under the Agreement and also maintains that the Organization has not carried the burden of proof regarding proper filing of the claim.

Specifically, Carrier insists that the claim was improperly filed, but also that the record is rife with credibility conflicts regarding the original filing of the claim and since the Board is unable to resolve credibility impasses then the Organization's contentions regarding original filing cannot prevail.

Examination of the documentary evidence shows that someone "doctored" the initial claim letter dated May 22, 1975 so that in its altered state it indicates submission to the General Foreman rather than to the Car Foreman. Carrier maintains that the alteration was done by the Organization and that the claim was submitted to the General Foreman on May 26, 1975. The Organization maintains that the claim was submitted to the Car Foreman on May 22, 1975 and thereafter altered by the General Foreman to show improper submission at the later date. It is established without doubt that the Car Foreman is the official to whom claims are to be initially submitted.

In the state of this record it is not possible to determine the critical points at issue without making credibility choices between the directly conflicting stories of the General Foreman and the Local Chairman. Those individuals alone know for sure what happened and they relate irreconcilable versions of the transaction. In the circumstances, we are unable to determine facts which are essential to the proper resolution of this claim. See Awards 22 979 (First); 6579, 6876, 7051 (Second); 19501, 19939, 20229 (Third); 1157, 3201, 3347 (Fourth). With the established precedent and the accepted standards and burdens of proof under which we operate, the onus of such a record deficiency falls upon the moving party. We have no alternative but to dismiss the claim.

It is not without a sense of frustration and reluctance that we so decide, since we believe that wherever possible disputes should be joined and decided on their merits rather than upon procedural technicalities. Particularly is this true where it is equally likely as not that a party has profited by tampering with evidence and taking advantage of our limited jurisdiction. If that is what happened herein, then such a victory indeed is pyrrhic because these parties must continue to live together and deal with one another in the day-to-day administration of their Agreement. Collective bargaining and grievance handling are institutionalized conflicts made tolerable by mutual respect and honesty. Those who refuse to live up to those standards inevitably are repaid in their own coin.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 7th day of February, 1979.