

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Sheet Metal Workers International Association
(Duluth, Missabe and Iron Range Railway Company

STATEMENT OF CLAIM:

1. The Carrier violated the provisions of the current controlling agreement, Rule 111 in particular, when they improperly assigned other than a tinner to build and install duct work in the Proctor, Minnesota Electrical Shop in Building No. 146 on February 6, 1987.

2. That accordingly, the Carrier be required to compensate Tinner J. Carlson in the amount of four (4) hours pay at the straight time prevailing rate for the above-stated date.

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 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.

The Organization filed a claim on March 4, 1987, with the Supervisor - Maintenance of Way, alleging a violation of Rule 111 of the Schedule Agreement because B & B employees, instead of Sheet Metal Workers, were used to build and install duct work. B & B employees are under the jurisdiction of the Engineering Department, and Sheet Metal Workers are under the jurisdiction of the Locomotive Department. The claim was denied both on merits and because of an alleged procedural defect. The Carrier's position with respect to the latter is that the claim had not been progressed to the proper officer of appeal in accordance with Rule 30 of the Schedule Agreement.

The Organization was advised that the claim should be addressed to the Claimant's immediate supervisor per the language of the applicable Rule. The Organization again appealed the claim to the Acting Chief Engineer on April 1, 1987, who again denied the claim on grounds that it had not been properly processed per Rule 30. The Organization then appealed the claim to the Director of Personnel and Labor Relations who was the highest level Appeal Officer. The claim was again denied on this level.

Rule 30 reads, in pertinent part, as follows:

Paragraph a.

Present claim "to the foreman or supervisor immediately in charge. . . ."

Paragraph b.

Appeal ". . . to the Car Superintendent if the claim involves a Car Department employee; to the Locomotive Superintendent, if it involves any other Mechanical Department employee; and to the General Supervisor of Electrical, Signal, and Communications, if the claim or grievance involves an Electrical Department employee. . . ."

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Paragraph d.

Appeal ". . . to the Superintendent - Motive Power and Cars . . ." (if denied by Car or Locomotive Superintendent), or ". . . to the Chief Engineer . . ." (if denied by the General Supervisor of Electrical, Signal and Communications).

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Paragraphs f and g.

Appeal ". . . to the Director of Labor Relations"

Paragraph h.

Institute proceedings before the ". . . National Railroad Adjustment Board"

There is a letter of record dated February 9, 1984, to the Directing General Chairman of the Sheet Metal Workers, wherein the Organization was advised of the proper appeal process when processing claims. The procedure is as follows:

Level 1 -- Initial Claim

- present time card or other form of written claim, to the immediate supervisor of the claimant.

Level 2 -- Appeal of the Initial Decision

- present to the department head for whom the immediate supervisor works. This will be the Car Superintendent, Locomotive Superintendent, Chief Engineer, Superintendent - Transportation, or Director - Dock and Storage Facilities.

Level 3 -- Appeal of the Decision of Department Head

- present to the Director of Labor Relations.

Discipline Cases:

- Appeal the Hearing Officer's decision directly to the department head. Any appeal from his decision should be presented to the Director of Labor Relations.

On the claim date the following positions of responsibility existed:

Engineering Department

1. Supervisor - Maintenance of Way (Supervised B & B employees)
2. Acting Chief Engineer (Head of the Engineering Department)

Locomotive Department

1. Supervisor - Mechanical Services (Supervised Sheet Metal Workers, Boilermakers, Machinists, Shop Preparatory Forces)
2. Locomotive Superintendent (Head of the Locomotive Department)

Absent resolution of this claim on the property it was docketed before this Board for final adjudication. The Brotherhood of Maintenance of Way Employees was advised of its right to submit a Third-Party Submission in accordance with Section 3, First (j) of the Railway Labor Act. That Organization did so and the Sheet Metal Workers submitted a rebuttal.

The Board has reviewed the record and must conclude that this claim is procedurally defective. In accordance with Rule 30 the claim should have been addressed first to the Locomotive Department's Supervisor - Mechanical Services, and then to the Locomotive Superintendent. The reasoning found in Second Division Award 6555, applicable to this case, is cited here with favor by the Board. That Award states, in pertinent part, the following:

"The record in this case discloses that the claim was not handled on the property in accordance with the applicable rule . . . of the collective bargaining Agreement. The claim was . . . nor was it presented to the appropriate officers of the Carrier on the property, in accordance with the Agreement. Lack of experience in the procedure cannot overcome this deficiency (see Award 5250).

'Section 3, First (i), of the Railway Labor Act provides in part:

". . . disputes between an employee . . . and a carrier . . . growing out of grievances . . . shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board . . ."

It is apparent from the record that the claim in this case was not handled on the property of the Carrier in accordance with the provisions of the applicable Agreement and as required by Section 3, First (i) of the Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board. The Claim is therefore barred from consideration by this Division and will be dismissed."

(See also Second Division Awards 2240, 5250 and 11665.)

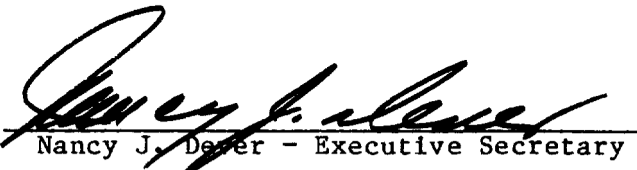
A W A R D

Claim dismissed.

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Award No. 12074
Docket No. 11591-T
91-2-88-2-44

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of July 1991.

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