

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU  
(CSX Transportation, Inc.  
(The Louisville & Nashville Railroad Company)

STATEMENT OF CLAIM:

1. That the Louisville & Nashville Railroad Company, hereinafter referred to as the Carrier, violated the provisions of the Agreement, particularly, but not limited to, Rules 30(a), 104, 26 and 29, when on various dates commencing on February 3, 1990 and continuing through March 26, 1990, they instructed and/or allowed other than carmen assigned to the Etowah, Tennessee seniority roster to perform carmen's work in the Etowah, Tennessee shop as outlined hereinbelow.

2. And accordingly, the Carrier should be ordered to compensate Etowah, Tennessee Carmen T. E. King, P. Williams, P. L. Yates, J. Scruggs and R. A. Cox, hereinafter referred to as the Claimants, 214.5 hours at the pro rata rate, to be divided among them, as a result of said violation.

FINDINGS:

The Second 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 employees 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.

On April 18, 1990, the Organization filed a claim with the Mechanical Superintendent at Corbin, Kentucky, on grounds that other than Carmen holding seniority at Etowah, Tennessee, were sent to do work at that point. Allegation was that Carmen from Chattanooga, Tennessee, were sent there to do repair and other work on various dates. The claim also alleged that employees from

outside companies also did work at Etowah which belonged to the Claimants named in this case. The claim requested total relief of 214.5 hours at pro rata rate to be paid and "divided equally among the" five Claimants. The claim was denied by the Mechanical Superintendent at Corbin on grounds that it was procedurally defective. According to the denial letter dated April 27, 1990, the Superintendent stated that his office did "not have jurisdiction over Etowah, Tennessee." Response by the Local Chairman to the Superintendent was that he could not accept this denial "as final decision" and that he was going to process the claim "to the next step."

On June 1, 1990, the Organization appealed the claim. In that letter the Organization advised the Carrier that when the facility at Etowah was closed some of the Carmen working there had been transferred to Corbin, Kentucky, by Agreement and at the same time the Organization had closed its Local Lodge 6270 and membership from the latter was transferred to Local 6104 in Corbin. At that time also the General Chairman advised the Carrier's Labor Relations' Department in Jacksonville that it would be the Local Chairman at Corbin who would be handling "any future disputes arising at Etowah, Tennessee" and a copy of this letter was furnished to the Mechanical Superintendent at Corbin to whom the original claim had been addressed. After further handling of the claim on property the Carrier advised the Organization, by letter dated January 31, 1991, that Etowah, Tennessee, was in the Carrier's "Atlanta Division" and that all claims filed for Etowah should have been filed with the head of that Division and not with the Superintendent in Corbin, Kentucky.

The problem in this case lies in the fact that the parties did not agree on the procedures for handling claims after the facility at Etowah was closed and that the resultant reorganization by the Union did not coincide with the manner in which the Carrier delegated jurisdiction to its officers to handle claims. The Organization states that when it first told the Carrier that the Etowah claims would be handled by Lodge 6104, the Carrier had not taken exception to that for "almost three years." Such appears to be true, as far as the Board can determine from the record. Nevertheless, not taking exception is not the same as a mutually agreed upon procedure for handling claims. The fact of the matter is that according to the organization of authority structures by the Carrier, the Superintendent at Corbin did not have jurisdiction to handle the claim filed with him by the Local Chairman from Lodge 6104.

After review of the complete record the Board must conclude that the claim is procedurally defective. There is considerable support on basis of arbitral precedent emanating from the Board to warrant conclusion that cases of this type be dismissed and the Board so rules (See Second Division Awards 2240, 5250, 6555, 11665 and most recently, 12074).

Form 1  
Page 3

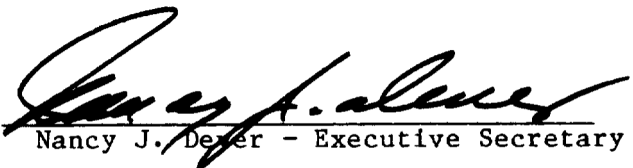
Award No. 12313  
Docket No. 12337  
92-2-91-2-127

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1992.