

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISIONAward No. 12475  
Docket No. 12131-T  
92-2-90-2-271

The Second Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ Division of TCU  
(  
(Richmond, Fredericksburg & Potomac Railroad Company

STATEMENT OF CLAIM:

1. That the RF&P Railroad (hereinafter "Carrier") violated the provisions of Rules 29 and 101 of the controlling Agreement when, on May 11, 1988 at 7:30 A.M., the Carrier's supervisor instructed Laborers, Machinists and a Pipefitter from the Richmond Shop to straighten the hand rails on Engine CSXT 1781 and CSXT Engine 1841.

2. That, accordingly, Mr. Woods (hereinafter "Claimant") is entitled to be compensated for eight (8) hours pay at the time and one half applicable Carmen's rate of pay.

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.

As Third Parties in Interest, the International Association of Machinists and Aerospace Workers, International Brotherhood of Firemen and Oilers and Sheet Metal Workers International Association were advised of the pendency of this dispute, but did not file a Submission with the Division.

The Claimant is employed as a Carman at the Carrier's Bryan Park Terminal Shop facility in Richmond, Virginia.

On May 30, 1988, the Organization's Local Chairman filed a Claim with the Carrier in which he set forth the following:

"On May 11, 1988, 7:30 a.m. Hot Track Foreman A.E. Lee instructed Laborer, Machinist, & Pipefitter from Richmond Shop to straighten handrails on Eng. CSXT Eng. 1781 front handrails and CSXT Eng. 1841 front handrails.

This job to take care of the locomotives in Richmond shops was bid in by Mr. Ron Woods. Mr. Woods was available to do this work, and is a violation of the current work rules.

Request 8 hours pay at time & half at the current rate of pay for Mr. Ron Woods Carman Richmond Shop."

The Organization relies upon Rules 29 and 101 in indicating that the work in question constitutes work traditionally and historically recognized as belonging to the Carman's Craft.

This Board finds that the specific work performed by the Claimant involved the installation of a safety chain on the handrails. The Carrier's investigation of the May 11, 1988 episode revealed that the Claimant "did participate in the work on the locomotives in question." However, the Carrier does not dispute the Organization's contention that the Claimant performed the installation of a safety chain on the handrails after they had already been straightened by persons other than Carmen. Thus, the Carrier assigned work which is exclusively within the Carman's craft under Rules 29 and 101 to other crafts. Accordingly, this Board cannot conclude that there is an irreconcilable dispute with respect to the facts to warrant dismissal of the instant Claim.

However, this Board's lack of jurisdiction to resolve the Claim has been raised by the Carrier because no conference was held prior to its submission to the Board. In the Carrier's ex parte submission to the Board, the Director, Personnel and Labor Relations, in relevant part, **indicated:**

"Carrier affirms that all evidence and phases of matters contained herein have been discussed with and disclosed to the employees and our position in every particular was made known to them in conference."

This paragraph is preceded by the following paragraph:

"Finally, Carrier submits that no conference was held by the parties on the property prior to this appeal and that the Second Division should dismiss this claim for lack of jurisdiction."

Obviously, the paragraphs contradict each other. The query to be addressed is whether the reference in the Carrier's Ex Parte Submission to a "conference" is merely boilerplate language and without any factual basis. The record discloses that in a letter to the Director, Personnel & Labor Relations on January 11, 1989, the General Chairman indicated that it was his "desire to conference this matter, on the property..." He then indicated: "It would be appreciated if you might suggest a time and a date for such a meeting to discuss this and other claims."

In reply to the General Chairman's letter, the Director, Personnel & Labor Relations by letter dated January 23, 1989, requested the General Chairman to "please telephone my office at your convenience to arrange for a mutually convenient time and date."

Except for the references to scheduling a conference in this exchange of letters, there is nothing in the record to establish that a conference was held on the property. Thus, the reference to a conference in the Carrier's Ex Parte Submission to the Board is merely boilerplate language.

In light of the record, this Board concludes that the failure to have a conference constitutes a procedural flaw which is fatal to the instant Claim. In this connection Second Division Award 11416 stated:

"Suffice to say that under Section 152, Second, it is mandatory that all disputes must be considered, and, if possible, decided, with all expedition, in conference between the parties on the property. Such a conference is a prerequisite to any case being referred to this Board. The purpose of this section of the Act was to encourage settlement of disputes between the parties, rather than 'automatic' referrals of disputes to the Board.

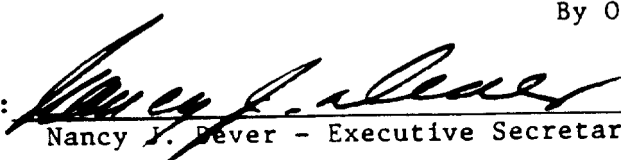
The record of this case indicates that no conference relative to this Claim was held on the property prior to its submission to this Board. For this reason we have no alternative but to dismiss the Claim based on this procedural flaw."

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 4th day of November 1992.