

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12169
Docket No. 11962-I
91-2-90-2-102

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

(Edward A. Magana I
PARTIES TO DISPUTE: (
(Grand Trunk Western Railroad Company

STATEMENT OF CLAIM:

"Train Scheduled Departures, and Standard Procedures Re: Same (also) Proper Safety Serviceing of Equipment, and Repairs, of Predepartureing Trains."

(Part A-2) Description is as follows:

Feb. 12, 1990: Began work, of inspection repairs, loaded-equipment check, air-testing in preparation for train departure-scheduled at 17:00 C.S.T., One and one-quarter hours in Advance of my regular-scheduled Assignment--Hours 15:00 ending 23:00 C.S.T., Due to man-power hours abolished, Totaling Forty-Eight (48) Hours--WEEKLY!, as have previously my Co-workers had worked.

(also)

Feb. 21, 1990:--During Continuous Inspection, Repairs, Safety-loading Check, etc; in preparation of/and during air-testing of DEPARTING-TRAIN, By-Passed in doing so, into the next-hour (1) hour past my Scheduled-Assignment, RESULTING in (1) hour at Premium Rate!

- - - - - Final Result: March 8, 1990!

Investigation Scheduled and held, requireing my presence at the Grand Trunk Western Railport Intermodal Yard; resulting in Twenty (20) Demerits being Assessed me, for and regarding dates above, having utilized my prior years of Railroads experience with the Grand Trunk Western Railroad and other Railroads Prior, Twenty-Five Years Plus, If this descision, to use Standard Proceedures, were Ignored, TRAIN DELAY WOULD HAVE RESULTED! An Unfair Decision, with a personal Double-Standard impression clearly evident,. REQUESTING A REVIEW OF THIS BIASED DETERMINATION! (sic)

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 were given due notice of hearing thereon.

On April 3, 1990, the Claimant was notified that he was being assessed 20 demerits for Violation of Rule 1 of the GT General Rules and for Falsification of a Labor Distribution dated February 12, 1990.

The Carrier alleged that Claimant had falsified a February 12, 1990 Labor Distribution report by claiming that the Terminal Supervisor had authorized one and one-quarter hours overtime worked on that date. The January 30, 1990 Instructions by the District Mechanical Supervisor state the following:

"To All Railport Carmen:

No overtime will be paid unless it has been authorized by Mr. Shelfo, or a supervisor. Furthermore, the authorizing employee's name must be on the labor distribution."

The Claimant stated that subsequent to the posting of the January 30, 1990 Instructions, his Supervisor told him that it was unnecessary to interrupt management for overtime authorization. He thought that notation of the on-duty Supervisor's name was sufficient. The Claimant testified rather extensively at the Investigation that Railport was a one-man mechanical operation and that forty-eight hours of Carman work had been blanked weekly. Therefore, it was not uncommon to work more than 8 hours, and he filed the report on the day in question accordingly, as he thought he had been instructed.

Irrespective of the merits of the case the Carrier argues that Claimant had not properly progressed his claim in accordance with Circular No. 1, of the Board and Rule 29 of the Agreement.

Circular No. 1 states: "All disputes between a carrier or carriers and its or their employees shall be considered . . . in conference . . ." The Circular further requires that disputes "shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes . . . No petition shall be considered by any division of the Board unless the subject matter has been handled in accordance with the provisions of the Railway Labor Act, approved June 21, 1934." Finally, the Circular requires the Petitioner to "clearly state the particular question upon which an award is desired."

Rule 29 of the Agreement requires that "if a disallowed claim is to be appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance"

A review of the record shows that Claimant failed to appeal his claim, which had been disallowed by the Chief Mechanical Officer, to the Carrier's highest designated officer authorized to receive claims. In fact, no appeal was received by the Carrier at all. Also, no conference was held regarding the claim.

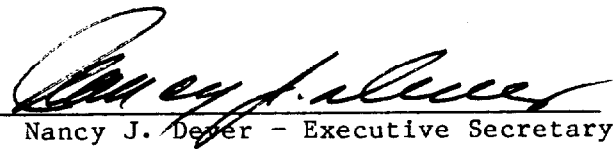
It is well established that "this Board is . . . precluded from reviewing and deciding . . . claims that were not fully handled on the Employer's property" pursuant to the provisions of Circular No. 1 (Third Division Award 27586; also, Second Division Award 11416; Third Division Awards 25298, 28122 and 28613). The instant claim must be dismissed.

In view of the above, the Board is foreclosed from ruling on the merits of this case.

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 16th day of October 1991.

