

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU
(Chicago, Missouri & Western Railway Company

STATEMENT OF CLAIM:

1. That the Chicago, Missouri & Western Railway violated the terms of our Agreement, particularly Rules 8, 11, 12 and 20, when they arbitrarily reassigned Carman J. Gonterman to a new job at a new location. The Carrier was also in violation of Rule 34 of the Agreement by failing to deny this claim in a timely manner.

2. That accordingly, the Chicago, Missouri & Western Railway be ordered to compensate Carman J. Gonterman time and one-half for all hours other than 7:30 a.m. till 4:00 p.m. (his regular shift), from September 8, 1989 thru September 21, 1989, and five thousand dollars (\$5,000) as punitive damages for their blatant disregard for the language in the Agreement. The Carrier shall also allow Carman N. Gree, F. Penn, C. DeHart and L. Harper five thousand dollars (\$5,000) each for violating Rule 8 and 12 by refusing them the opportunity to work the job which Gonterman was assigned.

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 genesis of this dispute resides in the economic conditions associated with the business climate during the time period under consideration. The Carrier became a railroad in April 1987, and commenced operation over tracks in Illinois and Missouri purchased from the Illinois Central Gulf Railroad. The projected business did not develop and after operating at a

deficit for some time, the Carrier was forced to seek protection under Chapter 11 of the Bankruptcy Code in April 1988. Its efforts to curtail expenses resulted in substantial lay-offs for all classes of employees. The reduction in Carmen ranks was particularly contentious at the East St. Louis Yards. This situation was further aggravated in April 1989, by the withdrawal of business from that yard by its largest customer. These conditions prompted a flurry of claims. It is from this background that the misunderstandings associated with the present Claim arose.

Each party to this dispute claims as a defense that Rule 34 was violated. Rule 34 deals with the timeliness of filing claims and appeals. It is not necessary to review all the evidence in the record in order to determine the validity of such claims. In view of the turmoil on the property associated with the bankruptcy, reorganization, furloughs, and attendant disruptions, it is understandable that misunderstandings would arise. Since neither party has clean hands with respect to its position on the Rule, and the record is vague in some respects, we cannot determine that either party's position is justified. However, the parties eventually agreed to certain extensions of time limits for the purpose of filing before this Board. In view of the foregoing we determine that Rule 34 does not serve as a bar to disposition of the Claim by this Board.

At the time of the alleged violation of the Agreement, Claimant held a Carman position at Springfield, Illinois. The Cline truck for heavy mechanical repairs was located in Springfield. A need arose to use the Cline truck to assist the locomotive repair forces in East St. Louis in changing traction motors on locomotives. Since the use of the truck in East St. Louis was of a temporary nature, the Carrier elected to use Claimant on an away-from-home basis to operate the Cline truck while it was temporarily assigned to East St. Louis. Claimant views this action as a violation of the Agreement and seeks relief as described in the Statement of Claim. Claimant worked on the assignment from September 11 through September 21 with the exception of one day when he returned to Springfield with the truck to assist at that location. The record reveals that at various times Carmen assigned to the Cline truck were reassigned for periods of time to locations other than their headquarters point. The Carrier had only one Cline truck. In fact, Rule 15 of the Agreement provides:

"Except as otherwise provided herein, the Carrier shall have sole discretion to establish, change from time to time, and abolish work assignments."

There is nothing in the Agreement which would prohibit the application of this Rule under the circumstances. Claimant was paid his normal wages, including overtime. Further, he was paid expenses in accordance with Rule 23 of the Agreement. Based on the foregoing and the entire record, we find no violation of the Agreement. Claimant was properly compensated.

Form 1
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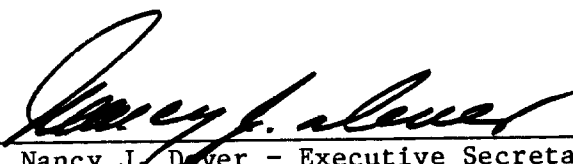
Award No. 12404
Docket No. 12393
92-2-91-2-188

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 5th day of August 1992.