Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13411
Docket No. 13220
99-2-96-2-130

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen, Division of
(Transportation Communications International Union
(
(CSX Transportation, Inc. (former Louisville and
(Nashville Railroad Company)

STATEMENT OF CLAIM:

"Claim of the Committee of the Union that:

1. That the Louisville and Nashville Railroad Company, (now a part of CSX Transportation and hereinafter referred to as Carrier) violated the controlling agreement rights of Pensacola, Florida carman J.L. Janes, (hereinafter referred to as Claimant) specifically but not limited to Rules 14, 18, 19, and 29 when Carrier denied Claimant his contractual rights to work the known vacancy of Lead Carman I.E. Ellsworth from February 27 through March 10, 1995 as requested.

2. Carrier should now be ordered to compensate Claimant for eight (8) hours pay each day at the pro rata Lead Carman rate on March 2, 3, 9 and 10, 1995 and for $.50 an hour for 8 hours each day or a total of $4.00 each day on February 27, 28 and March 1, 6, 7, and 8, 1995."

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 employee 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.

This claim raises the issue of whether Claimant, a Carman at Pensacola, Florida, was entitled to work vacancies on Lead Carman I. E. Ellsworth's job on various dates set forth in the claim in preference to the junior employees selected. The following Rules are pertinent to a resolution of this dispute.

"Rule 14 - Changing Shifts

(b) Regularly assigned employes, upon application, will be given preference in filling temporary vacancies known to last more than 7 days, without added expense to the Company, arrangements to be made between the officer in charge and the committee."

"Rule 18 - Bulletining Vacancies

(f) Arrangements will be made between the officer in charge and the local committee in filling, temporarily, bulletined positions pending assignment, or temporary vacancies."

The instant claim was initiated on March 29, 1995 alleging a violation due to the Carrier's failure to bulletin the Lead Carman vacancy and its use of junior employees to fill the position. The claim was denied by the Carrier on May 10, 1995 on the basis that its actions were sanctioned by Rule 14(b). In its appeals of June 1 and July 7, 1995 the Organization asserts that the parties used Rule 14(b) to fill jobs at that location in the past, allowing the Claimant to work would not have required additional expense, and the Claimant requested the right to work this vacancy. The Carrier's September 1, 1995 declination contends that the Claimant had no seniority right to work as Lead Carman on any of the claim dates, that the vacancies in issue were not known to last more than seven days, and that there was no violation of the Agreement or any local understanding.

The next exchange of correspondence was a letter dated March 26, 1996 confirming the parties' telephone conference of March 22, 1996. Thereafter, in May, July, September and October 1996, the Organization requested, and Carrier granted, four separate extensions of time for further handling the claim. The final time limit for handling this matter was set at December 1, 1996. By letter dated November 15, 1996, the Organization responded to verbal conversations and prior Carrier correspondence, contending that the vacancy in issue was known to exist for over seven days. It filed its Notice of Intent with the Board on November 18, 1996. The Carrier's letter of December 1, 1996 objects to the Organization's attempt to belatedly add a new argument in the record (citing Rule 19) and attempt to preclude it from effectively responding by closing the record. The Carrier also asserts that both vacancies involved were known to exist for only five days at the time they were filled. The Organization objects to consideration of this response as untimely.

There is nothing in the language of Rule 14(b) requiring that a vacancy be filled by seniority. Rule 14(b) places an obligation upon both parties to make arrangements for the filling of temporary vacancies known to last more than seven days. Rule 18(f) imposes similar obligations upon the officer in charge and the local committee in filling temporary vacancies known to last more than seven days. While the parties dispute whether these vacancies were known to last more than seven days, a careful review of the record reveals that neither party fulfilled its obligation with respect to these vacancies. There is no evidence, other than an assertion by the Organization over three months after the claim was filed, that the Claimant actually applied to fill these vacancies. Further, it appears that the local committee failed to make specific arrangements with the officer in charge for the filling of these vacancies, as it had done in the past. The Organization did not assert that any understanding was reached or that it initiated the procedure for such discussions. Thus, on the local level, the parties did not properly initiate the agreed-upon procedure for filling temporary vacancies.

In addition, the manner in which this claim was processed appears to have severe consequences for the parties. Initially we note that the issue of the timeliness of the Carrier's December 1, 1996 response would not be before us if the matter had been handled under the routine guidelines imposed by Agreement and practice. Instead, the Carrier granted the Organization four different extensions of time for handling the claim without specifying any limitation on the filing of additional correspondence. The Organization waited over 14 months to respond to the Carrier's substantive contentions, and did so shortly before closing the record and attempting to shut off any effective reply by the Carrier. In such correspondence it added, for the first time, an allegation that

Rule 19 applied and had been violated. Under such circumstances, we may well have considered the content of the Carrier's December 1, 1996 letter if necessary.

However, we find it unnecessary to do so because the Carrier's March 26, 1996 letter makes clear that, at best, a telephone conference was held on this claim. Awards of the Board establish that the parties must hold a face-to-face conference regarding the claim prior to vesting jurisdiction in the Board to review the dispute. See, e.g., Third Division Award 14873; Special Board of Adjustment No. 570, Award 727. This requirement is premised on the language of Section 2 (Sixth) of the Railway Labor Act, and the reasoning that a face-to-face meeting gives each party the opportunity to clarify the issues, evidence and arguments enabling them to soften their positions and increase the prospect of settlement. This case is a classic example of why a face-to-face conference is necessary and how the mere exchange of correspondence over a protracted period of time is insufficient to fulfil a party's statutory responsibility to make every reasonable effort to settle a dispute.

Because no face-to face conference was held on this claim, the Board lacks jurisdiction to consider the merits.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 16th day of June 1999.