

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21331
Docket Number MW-21386

Nicholas H. Zumas, Referee

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE: (

(St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when, on Saturday, July 6, 1974, an Assistant Foreman **was used** to operate the **electro-matic** switch tamper No. **MG-991-C2** instead of using the regularly assigned operator thereof (**Jimmy L. Young**) (System File D-8366/B-1025).

(2) Claimant Jimmy L. Young shall now be allowed **11-1/2** hours' pay at his time and one-half rate because of the aforesaid violation.

OPINION OF BOARD: During the handling on the property the Organization contended that two specific provisions of the agreement were violated when Carrier failed to call Claimant to perform the work involved.

Carrier, during the handling, asserted that the claim was "lacking in agreement support."

It is clear that the two provisions; **Article 2, Rule 3** and **Article 2, Rule 8** have no application to the claim.

In its submissions before this Board, the Organization asserted additionally that **Article 5, Rule 6(1)** was also violated. Whether or not **Article 5, Rule 6(1)** has merit cannot **be determined** by this Board. There are numerous awards of this Board that have consistently held that failure to cite specific rules violations during the handling on the property precludes consideration at the Board level.

In Third Division Award No. 20064 this Board held:

The foregoing shows that the rules mentioned on the property were **Rules 12 and 22(f)**. However, in the claim presented to the Board, **Rules 12 and 22(f)** are not mentioned and instead the claim is now predicated on Carrier's violation of **Rules 2(a), (f), 3(a), 6(a) and 57**. **On** these facts there can be no doubt that the claim as presented to the Board is not the same claim that was handled on the property and, consequently, there is no proper claim before the Board for its consideration. The **employees** have the responsibility and burden to cite the rules and agreement language relied upon during handling on the property. This, of course, is a fundamental due process right of the other

party, **and** where the rules are not cited, discussed, or in some way stated on the property, the omitted rules cannot be supplied for the first **time** in the submission of claim to this Board. We conclude therefore that the claim as stated is not properly before the Board and, accordingly, we **shall** issue a dismissal Award. For similar rulings see Award Nos. 15835, 19857, 19858, 19902, and 19970.

Under the circumstances, the Board has no alternative but to dismiss the claim.

FINDINGS: The Third Division of the Adjustment Board, **upon** the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier **and** the **Employees** involved in this dispute are respectively Carrier and **Employees within** the **meaning** of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; **and**

That the Claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 30th day of **November** 1976.

