

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25507
Pocket Number GL-25187

Robert W. McAllister, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Baltimore and Ohio Chicago Terminal Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9760)
that:

(1) Carrier violated Rules of the effective Clerk-Telegrapher Agreement when it failed to reply, deny or allow claims filed on the respective dates of January 30, 31 and February 6, 1982, within the allowable time limits specified thereby, and

(2) As a result of such impropriety, Carrier shall be required to compensate employee K. L. England, Carrier employee identification number 1580116, Marseilles, Illinois, three (3) hours pro rata rate (\$31.60) for each date of December 9, 10, 11, 18, 27, 1981; January 4, 6, 13, 14, 15, 18, 20, 21, 22, 25, 26, 28, 28 and 28, 1982, and

(3) Carrier shall also be required to compensate employee K. L. England six (6) hours pro rata rate (\$63.20) for the date of January 15, 1982.

OPINION OF BOARD: On January 30, 31 and February 6, 1982, the Organization filed a series of claims on behalf of Claimant K. L. England. The Carrier did not decline the claims within sixty days of the claim as required by Rule 4X. The Carrier defends itself by asserting the dispute does not fall within the province of the Board in that such disputes are limited to issues involving the Carrier and its employees. The Carrier argues the record will clearly show the Claimant was never a bona fide employee. The Carrier's submission and rebuttal submission are most persuasive. The problem this Board has is with the evidence before us. The Organization claim shows the Claimant to have a Carrier identification number and as the Claimant was on duty. The Carrier's statement of facts may, in reality, accurately reflect the status of the Claimant. Notwithstanding, the on-property handling does not show those facts to have been established by other than assertions and references to a prior dispute without submission of supporting material and/or documents. Since the issue of the Claimant's employment status was to be challenged, it should have been so disputed by answering the claims filed in accordance with Rule 4X which, without exception, requires disallowance within sixty days from date of filing and, if not, the claim is to be allowed as presented. Unlike the numerous awards cited by the Carrier in support of its position, this Board is unable to conclude that the record before us established through the submissions of probative evidence that the Claimant was not a bona fide employee.

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

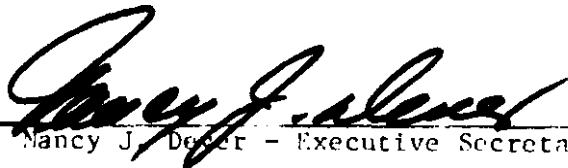
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dyer - Executive Secretary

Dated at Chicago, Illinois, this 13th day of June, 1985

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CARRIER MEMBERS' DISSENT
TO
AWARD 25507, DOCKET CL-25187
REFEREE ROBERT W. MC ALLISTER

The Majority in Award 25507 properly concluded that:

"The Carrier's submission and rebuttal submission are most persuasive." but then proceeded to completely ignore the facts of record in order to reach its conclusion and sustain the claim on the basis of a time limit violation.

Evidence was presented showing that Claimant's service with Carrier was terminated in late 1981 and same was acknowledged by the Organization's General Chairman in a letter dated March 16, 1982.

Further, a copy of Third Division Award 25111 involving the same parties was presented wherein the Board found in pertinent part:

"Before the Carrier discontinued the Claimant's service on an as needed basis, he had worked 157 days in 1981. Thus, the Claimant satisfied the required number of days of **compensated** service, **under** Section 1(1). However, he was not laid off; at the insistence of the Organization, his employment was discontinued by the Carrier."

* * * * *

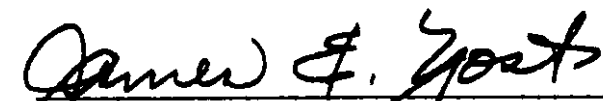
"His sporadic employment went undetected by both the Organization and Carrier for almost 9 months. During this time, the Claimant did not acquire seniority. The fact is that he was not properly in the service of the Carrier and had no rights under the applicable Agreement."

The record before the Board established that Claimant had no rights under the applicable Agreement, and, accordingly, there was no requirement

on Carrier to respond to any alleged claim presented on behalf of Claimant.

The award is palpably erroneous and defective by the obvious failure of the Majority to consider evidence of record before the Board.

We, therefore, vigorously dissent.


J. E. Yost, Carrier Member


W. F. Euker, Carrier Member


P. V. Varga, Carrier Member


T. F. Strunck, Carrier Member


M. W. Fingerhut, Carrier Member

