

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25879
Docket Number MW-25459

Lamont E. Stallworth, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Chesapeake and Ohio Railway Company (Southern Region)

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

(1) The Agreement was violated when the Carrier failed and refused to permit Messrs. Jesse D. Cales, Joseph A. Hoke, Robert Childs and Neiholas J. Yeargo to displace junior employees on the Clifton Forge Division (System Files C-TC-1475/MG-3649, C-TC-1487/MG-3651, C-TC-1474/MG-3648 and C-TC-1454/MG-3653).

(2) As a result of the violation referred to in Part 1 hereof, Messrs. Jesse D. Cales, Joseph A. Hoke, Robert Childs and Neiholas J. Yeargo shall be compensated for all wage loss suffered beginning September 17, 1982, October 15, 1982, September 20, 1982 and September 20, 1982, respectively, and continuing until such time as they were each returned to service or until such time as there were no employees junior to the claimants working on the Clifton Forge Division."

OPINION OF BOARD: This claim turns on two issues: 1) Did the Claimants notify the appropriate company supervisor of their desire to displace a junior employee, and: 2) Was significant evidence submitted to the Board which had not been submitted or discussed on the property?

The first question arises as a condition of the applicable rule. Under that rule, the Claimant must notify the proper designated company supervisor. The Carrier has asserted that the employees have been repeatedly advised that the Track Supervisor is the appropriate person to be notified, and have backed this assertion with listing of office hours, availability by telephone, and so on. The Organization asserts that this simply is not so, but backs its assertion with nothing other than saying that on at least one occasion the office was not open during part of the hours it was supposed to be open.

The Board finds the Carrier's assertion more persuasive as it goes directly to the issue. Thus, the Board concludes that Claimants knew with whom they were to file, but for reasons unknown, did not choose to do this in the proper manner.

The Carrier asserts that letters submitted in evidence at the Board were not submitted on the property. The Organization does not respond to this. It would appear that these letters are improper evidence, thus further stripping claimants of any basis of claim. Notwithstanding this procedural error of submission, the Board finds the first issue to be pre-eminent.

The Board can only concur in the long standing principle supported by this Board that Claimants are obligated to follow the specific procedures of the rule. These Claimants did not do that.

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

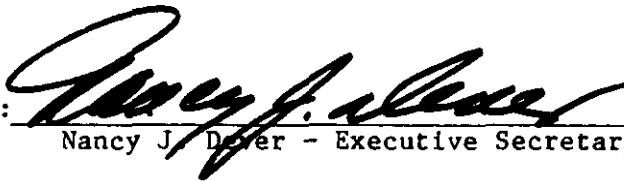
That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1986.