

(G. J. Giudicessi
PARTIES TO DISPUTE: (
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of G. J. Giudicessi (589) on behalf of J. R. Cumley that:

(a) Carrier violated the provisions of the current Clerks' Agreement at Topeka, Kansas when it knowingly and willfully withheld information regarding the conferencing of grievances, required to properly advance a grievance before the National Railroad Adjustment Board, and

(b) Carrier willfully, intentionally and maliciously withheld this information for the purpose of attempting to have grievances barred from being heard by the NRAB at a later date, and

(c) Carrier had an obligation to advise Claimant that such conference was required with Mr. B. J. East as no such requirement shows in the current Clerks' Agreement, and failure to do so negated the spirit and intent of the Agreement, and

(d) Carrier has treated Claimant unjustly by withholding this information, and

(e) Claimant J. R. Cumley shall now be compensated an undetermined amount plus an additional undetermined amount for each day after October 30, 1986 that this violation continues; to be determined by this Honorable Board, and

(f) Claimant J. R. Cumley shall now be compensated interest payable at the prevailing prime rate and any other damages and awards deemed proper by this Honorable Board."

FINDINGS:

The Third 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.

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Award No. 27549
Docket No. MS-28157
88-3-87-3-754

As Third Party in interest, the Transportation Communications Union was advised of the pendency of this dispute and filed a Submission with the Division.

The facts indicate that no conference was held as required by Rule 47 of the Agreement and the Railway Labor Act. For the reasons set forth in Third Division Award 26749, the Claim must be dismissed.

Finally, even if the merits could be reached, we can find nothing in the applicable Agreement between the Carrier and the Organization which supports the Claimant's position that such Agreement was violated.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. O'Leary - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of September 1988.