

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

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

(1) The Carrier violated the Agreement when it failed to assign Mr. D. R. Reid to fill a temporary vacancy as Class 2 machine operator (Pettibone end loader) at Avon Yard on April 5, 6, 9, 10, 11, 17, 18, 19, 24 and 25, 1984 (System Docket CR-1165).

(2) Because of the aforesaid violation, Mr. D. R. Reid shall be allowed the difference between what he was paid at the trackman's rate and what he should have been paid at the Class 2 machine operator's rate for eight (8) hours on each of the claim dates."

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.

After careful review of the record, the Board finds that the employee's original claim was devoid of any alleged rule violation. During the appeal proceedings, the District Chairman amended the Claim to allege a violation of Rule 3, Section 1. In its Submission, however, the Organization does refer this Board to Rule 3, Sections 1, 3 and 4 as supportive of its position that the Claim should be sustained.

Given this state of the record, we must conclude that there is a substantial variance between the Claim handled on the property and the one presented to this Board. The Organization may not at each step of the processing of a claim amend their Claim to include an ever increasing number of alleged rule violations. To find otherwise would prejudice the opposing party and defeat the intent of the Railway Labor Act that issues in a dispute before

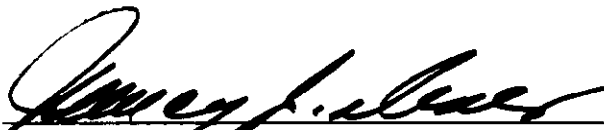
this Board shall have been framed by the parties on the property. Under the Awards of this Board, the instant Claim must be dismissed. See, Third Division Awards 20472, 21441.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of May 1989.