

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(CSX Transportation, Inc. (Seaboard System Railroad)

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

(1) The Career violated the Agreement when it refused to allow the members of Extra Forces 6T12 and 6T04 meal and lodging expenses or per diem allowance beginning on or about November 19, 1984 (Extra Force 6T12) and August 27, 1984 (Extra Force 6T04) (Carrier's Files 85-309 and 85-338).

(2) Chief Engineering Officer R. E. Frame failed to disallow the claim (appealed to him under date of September 7, 1985) as contractually stipulated within Sections 1(a) and 1(c) of Rule 40.

(3) As a consequence of either or both (1) and/or (2) above

'... the men of 6T12 seek remedy equal to the amount of lodging plus per diem allowance paid to other floating forces (i.e. forces not assigned a cook or cooking facilities).'

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.

Prior to consideration of the substantive merits of the Claims involved in this Docket we must first dispose of conflicting procedural contentions. The Organization argues that Carrier failed to timely respond at an intermediate appeal level, thus the Claims are payable by default. The Carrier argues that appeals at the intermediate level, as well as subsequent appeal to its highest designated officer handling claims under the Railway Labor Act, was outside the usual manner for handling such matters; thus, the Claim presented to this Board is procedurally defective and beyond our scope of consideration.

Review of the correspondence exchanged on the property leaves no doubt that deviations from usual and customary appeals procedures occurred after the original Claims were denied by Carrier's Division Engineer on July 15, and September 16, 1985. For example, the Division Chairman appealed directly to Carrier's Chief Engineer notwithstanding that:

"Historically and traditionally all claims and/or grievances handled with the Chief Engineering Officer's level are handled by the Federation's General Chairman."

Further appeal was taken, by the Division Chairman, directly to Carrier's Director of Labor Relations who responded with an uncontradicted statement that:

"The claims which you are attempting to appeal to this office have not been handled in accordance with the mandatory requirements of 45 USC 153, First (i) of the Railway Labor Act and the Grievance Handling Rules of the Schedule Agreement which require claims to be appealed by the duly authorized representative of the employees -- the General Chairman."

Also, Appendix F to the Agreement (a letter discussing claims handling procedures) can, with an uncomplicated reading, be viewed as supporting a conclusion that all appeals made to Carrier's highest designated officer, come from the General Chairman.

Accordingly, we view the appeal made to Carrier's Director of Labor Relations to be flawed. Therefore, we cannot resolve the substantive merits of the matter. The Claims will be dismissed.

A W A R D


Claim dismissed.

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Award No. 28249  
Docket No. MW-27549  
90-3-87-3-134

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 1st day of February 1990.