

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employes
(Toledo Terminal Railroad Company

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

(1) The Carrier violated the Agreement when it assigned and/or permitted outside forces to construct track at Walbridge, Ohio December 2, 1985 through January 10, 1986 (System File C-TC-2866/MG-5616).

(2) The Carrier also violated Rule 41 when it did not give the General Chairman advance written notice of its intention to contract said work.

(3) Because of the aforesaid violations, the furloughed Maintenance of Way Department employes listed shall be compensated as indicated.

<u>Claimant</u>	<u>Class</u>	<u>Number of Days Claiming</u>
R. Humes	Foreman	6 days
F. Thompson	Foreman	22 days
L. Dannenberger	Operator	28 days
A. Morrison	Laborer	21 days
J. Lockhart	Laborer	21 days
R. Bennet	Laborer	30 days
T. Klink	Laborer	30 days
P. Main	Laborer	30 days
A. Adams	Laborer	30 days
L. Gloria	Laborer	30 days
R. Humes	Laborer	24 days
B. Cortez	Laborer	6 days
M. Payden	Laborer	6 days"

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 were given due notice of hearing thereon.

A complex series of interlocking ownerships and mergers is at the heart of this dispute. The essential elements of the matter relate to the ownership and control of a piece of trackage devoted to automobile loading and a ramp facility. Originally, the B & O Railroad leased a portion of trackage to American Motors Sales Corporation which covered the construction of a ramp facility at Walbridge, Ohio. The facility was subsequently leased to a group, Total Distribution Services, Inc. (which appears to be a wholly owned subsidiary of CSX Railroad).

In 1985 TDSI decided to add a fourth track to the facility and sought outside bids for this work. Carrier was among the bidders but was not successful. TDSI chose an outside contractor to accomplish the task which was done in December of 1985 and in January of 1986. On January 31, 1986, the Organization filed the Claim herein alleging that the work should have accrued to C & O maintenance employees and it was contracted in violation of the C & O rules. The Claimants were furloughed C & O maintenance employees. Following the normal handling of the Claim on the property it was appealed to Carrier's highest officer. Following a conference on the Claim, the Organization, by letter dated August 11, 1986, amended the Claim by stating that the disputed work did not violate Rule 83 of the C & O Agreement but rather violated Rule 41 of the Toledo Terminal Agreement. This action was challenged by the Carrier who argued that the action resulted in a defective Claim under the time limit provisions of the Toledo Terminal Agreement.

Rule 9 of the Toledo Terminal Agreement provides:

"A - All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or this representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as precedent or waiver of the contentions of the Carrier as to other similar claims or grievances." (Emphasis added)


As the Board views it the Organization made at least two fatal errors in the disposition of the dispute herein. First, the Claim apparently should not have been a C & O Claim initially. If it was a C & O Claim, it was amended some six months after the initial filing, changing the Claim significantly. If it was, as appears to be the case, a Claim under the Toledo Terminal Agreement, then it did not conform to the time limit provisions of Rule 9 of that Agreement. In either event, the Board may not consider the merits of the matter; it must be dismissed under the particular circumstances involved in the handling of the entire dispute.

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 21st day of June 1990.