

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29449
Docket No. MS-29681
92-3-90-3-628

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

(John Robinson
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my/our intention to file Ex Parte Submission within thirty (30) days covering an unadjusted dispute between us and Consolidated Rail Corporation (Conrail), involving maintaining machinist in maintenance of way territory contrary (sic) to Rule 4 section 1 of the February 1, 1982 Agreement between the BMW and Conrail and Part 1 of the TCOM Agreement between the BMW and Conrail which became effective on January 22, 1988.

Kindly refer to the initial claim submitted by District Chairman Guarnieri as Exhibit 'A'. When the TCOM was moved from the machinist seniority district to Latrobe, Pa. which is repairman territory the machinist positions were to be abolished and advertised as M&W repairman. Since this did not happen, then repairman positions should have been kept on in machinist territory. As stated in the TCOM Agreement part 1 the seniority districts were going to govern the use of repairman and machinist. Since it has not, Conrail violated Rule 40 of the Conrail BMW 2-1-82 placement, promotion, lay-off etc..."

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.

This individual Claim arises out of the alleged failure by the Carrier to bulletin and award two Repairman positions on the 22 person Tie Change Out Machine (TCOM) crew. The Claim alleges the Carrier improperly kept two machinists, who were members of a different labor organization, in the Repairman positions in violation of the applicable Agreement.

The Carrier challenges the propriety of the Claimant's Ex Parte Submission and contends it violates the requirements of Circular No. 1. Carrier cites Third Division Award 23170 in support of its position that the Claimant's Submission may not be considered because of its deficiencies.

Our review of the Claimant's Ex Parte Submission reveals it to consist of two pages of untitled and uncaptioned narrative text which is unsigned by the author. The actual identity of the author is not listed anywhere on the two pages. In addition, it attaches a copy of a January 22, 1988 Agreement between the Carrier and the Organization concerning the staffing and operation of the TCOM. However, it does not contain any attachments to reflect the development of a record of the handling of the Claim on the property.

As stated in Award 23170, this Board is always reluctant to decide disputes on technicalities. It was recognized then, however, that the requirements of Circular No. 1 are mandatory and cannot be disregarded.

Based on the record as it exists in this matter, this Claim must be dismissed.

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 October 1992.