

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29517
Docket No. MW-29424
93-3-90-3-360

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned junior employe L. L. Stroman, Jr. instead of L. T. Woolard to fill the position of vacationing Foreman R. W. Mabe on Force 5F18 at Hamlet, North Carolina from April 24 through 28, 1989 (System File LTW-89-27/12(89-694) SSY).

(2) As a consequence of the aforesaid violation, Mr. L. T. Woolard shall be allowed the difference between what he earned at the trackman's rate and what he should have earned at the foreman's rate for the week of April 24 through 28, 1989. In addition, Mr. Woolard shall be compensated at the time and one-half rate for all overtime hours worked by Mr. L. L. Stroman during that same week."

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 claim arose from Carrier's decision to fill the position of a vacationing Foreman between April 24 and 28, 1989, with an employee junior to Claimant. Because of force reductions, Claimant, who held seniority as a Foreman, was working as a Trackman. The Organization alleges a violation of Section 11, Paragraph 12(b) of the National Vacation Agreement, which reads in pertinent part as follows:

"(b) As employees exercising their vacation privileges will be compensated under this agreement during their absence on vacation, retaining their other rights as if they had remained at work, such absences from duty will not constitute 'vacancies' in their positions under any agreement. When the position of a vacationing employee is to be filled and regular relief employee is not utilized, effort will be made to observe the principle of seniority."

The Organization maintains that Carrier failed to make an effort to observe the principle of seniority in its selection process.

Carrier, on the other hand, initially argues that the claim should be dismissed as procedurally defective, since it was not progressed in accordance with Section 3, First (i) of the Railway Labor Act. The Act requires that claims be handled in the usual and customary manner. Section 2, Second of the Act further provides that:

"All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute."

Carrier alleges that in allowing the claim to be progressed by the Division Chairman, R. L. Robinson, rather than by the General Chairman, J. D. Knight, the Organization violated the Act.

Since Circular No. 1 (issued on October 10, 1934, by the National Railroad Adjustment Board) mandates that "No petition shall be considered by any division of the Board unless the subject matter has been handled in accordance with the provisions of the Railway Labor Act...", Carrier believes that the Board lacks jurisdiction in the matter.

Carrier also suggests that the Organization also disregarded the provisions of Attachment F of the Agreement, which requires that claims be progressed by the Organization's Committee:

"Pursuant to our discussions, it was understood and agreed that when a claim has been declined by the Assistant Vice President of the Engineering Department and the Brotherhood desires to pursue it further, your Committee will file an appeal with this Department in accordance with Rule 40(c) of the Agreement in the usual manner. Once your letter of appeal is filed with this office, the provisions of Rule 40 will be automatically waived for both the Organization and the Carrier until conference is held and the claim (or claims) discussed in conference. Prior to the date scheduled for conference, your Committee will submit a list of those claims which it desires to handle at the next conference."

Carrier points to Third Division Award 28249 as being dispositive of this issue. That decision, which involved the same parties and the same procedural question, called for the dismissal of the claim. It argues that this precedent should and must be followed.

The Organization counters that Rule 55 of the Agreement allows for matters to be handled by the General Chairman or his designated representative:

"ACCREDITED REPRESENTATIVES

Where the term 'representative of the employees' appears in this Agreement it shall be understood to mean the General Chairman of the Brotherhood of Maintenance of Way Employes, of the Seaboard System Railroad, or his designated representative."

The Carrier is correct in noting that great deference is to be paid to prior arbitration decisions where the parties, issues, and Agreement language are the same. It is well accepted by this Board that, for the sake of predictability, it is best not to deviate from prior Awards. Deviation is called for only when a previous decision is glaringly or palpably erroneous, substantially unfair, or demonstrably flawed. The decision cited by Carrier as dispositive of this dispute cannot be characterized in that manner.

Although it appears that Rule 55 of the Agreement was not addressed by the parties in the matter at issue in Award 28249, a consideration of this Rule in light of the parties' special responsibilities in progressing claims does not alter the conclusion reached by the Board in Award 28249.

There can be no argument that Rule 55 enables the General Chairman to select a designated representative to handle any number of contractual matters that arise in the course of administering the Agreement. The requirements of Section 3, First (i) of the Railway Labor Act, however, must be considered in designating a representative to engage in the adjustment of disputes.

The Act states that:

"The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions....shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such

disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

Considerable emphasis is placed on handling disputes "in the usual manner." By requiring consistency in handling, the Act reduces the likelihood of procedural error. Each party comes to know what is expected in the handling on the property and before the Board.

It is apparent from the record in this case that, traditionally, claims have been progressed by the General Chairman on this property. In this instance, however, the General Chairman wrote to the Division Manager on June 21, 1989, stating that the claim was submitted by the Division Chairman under the guidelines of the General Chairman's office. The General Chairman asked for duplicative service, with a response to the Division Chairman and a copy to himself.

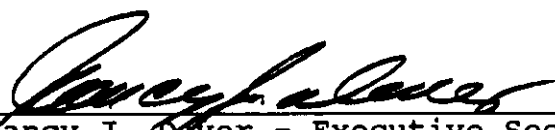
The danger in designating more than one individual to represent the Organization in progressing claims is that there is no longer consistency in handling. On the other hand, were the Organization to determine that Division Chairman Robinson (or any other Organization official) would henceforth serve as the General Chairman's designated representative and be the sole individual handling all claims for the Organization, for example, this would be in keeping with the General Chairman's authority under Rule 55 and would not be contrary to Section 3, First (i) of the Railway Labor Act. That does not appear to be the Organization's intent here, however, and therefore it must be concluded that the appeal, as progressed, was flawed and that the 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 3rd day of February 1993.