

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32948
Docket No. CL-33655
98-3-97-3-137

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

(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11697) that:

Claiming one day's pay at time and one-half plus associated deadheading and mileage from North Billerica, Massachusetts to Nashua, New Hampshire. Basis for claim due to Mr. Towle and Mr. Silk (Management) preparing switch lists for extra switcher on Saturday, April 15, 1995, at Nashua, New Hampshire.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

On or about April 30, 1995 the Organization filed the above-quoted claim contending that Supervisors Towle and Silk “. . . ; prepar(ed) switch lists for (the) extra switcher on Saturday, April 15, 1995 at Nashua, NH.” When the Carrier responded to

the claim by asserting that he had no knowledge that Towle or Silk acted as alleged, the Organization provided to the Carrier on November 11, 1995 a statement from Conductor Patrick Walsh that on the day in question when there were no Clerks working Supervisor Towle "... arrived and posted the 105 North Track, which was out pick-up." The Carrier continued to deny the claim stating that it could neither confirm nor deny the allegations made in the note of November 11, 1995.

The Carrier contends that the claim is procedurally flawed either because the Organization improperly identified the Claimant in its filing before this Board or because the claim insufficiently alleges facts upon which a claim can be brought and resolved. The Organization on the other hand asserts that the claim is procedurally sound and that it is supported on the merits as well.

The first argument raised by the Carrier is that in its filing before this Board the Organization did not identify either the Claimant or the Rule upon which the claim is based despite the fact that it did when the claim was filed and processed on the property. Accordingly, the Carrier moves that the claim should be dismissed. In support of its argument the Carrier cites Third Division Award 31381. We disagree with the Carrier's argument on this point. First, it is clear from the initial filing of the claim and the continued processing up to and including the arguments before this Board that the Carrier was well aware of the alleged facts and contentions that had been made on the property as well as the arguments made before this Board. Thus, unlike the situation in Award 31381, the Carrier was not prejudiced nor was it faced with new facts or arguments.

The second argument raised by the Carrier however merits closer attention. On this point the only evidence supported by the Organization in support of the claim is the statement of Conductor Walsh in which he alleges that Supervisors "*posted* the 105 North Track, which was our pick-up." (Emphasis Supplied) Carrier contends that there is no basis in the record for determining just what is meant by "posting" the track, noting that *if* it means preparing a switch list, and if the evidence shows that such action was taken by management, a contract violation would be made out. However, the only reference in the record to preparing switch lists, as well as other work allegedly reserved to the bargaining unit, is in the Statement of Claim. Thus, because the Organization, as it concedes, bears the burden of proof of establishing that the work in question is reserved to it under the General Scope Rule the statement of Conductor Walsh is insufficient to carry that burden. Accordingly, the claim insufficiently states and the

Form 1
Page 3

Award No. 32948
Docket No. CL-33655
98-3-97-3-137

Organization has not proven a cause under the General Scope Rule and the claim must fail.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of November 1998.