

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19420  
Docket Number CL-19319

Arthur W. Devine, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
PARTIES TO DISPUTE: (  
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6933)  
that:

1) Carrier violated the Clerks' Rules Agreement when it failed to call employe Ralph Richter for work as Road Caller when a vacancy occurred and when he made himself available for call.

2) Carrier shall now be required to compensate employe Ralph Richter for a day's pay at the pro rata rate of Road Caller for each of the following dates:

11-14-69	Pos. 09610	- 11 PM	- 7:00 AM
11-17-69	Pos. 09590	- 7 AM	- 3:00 PM
11-18-69	Pos. 09600	- 3 PM	- 11:00 PM
11-21-69	Pos. 09610	- 11 PM	- 7:00 AM
11-24-69	Pos. 09590	- 7 AM	- 3:00 PM
11-25-69	Pos. 09600	- 3 PM	- 11:00 PM
11-28-69	Pos. 09610	- 11 PM	- 7:00 AM
12- 1-69	Pos. 09590	- 7 AM	- 3:00 PM
12- 2-69	Pos. 09600	- 3 PM	- 11:00 PM

OPINION OF BOARD: From the record before us, we find that in the handling of this claim on the property the Organization advanced the general allegation that Rule 32 was violated when vacant Road Caller positions were filled on an overtime basis on the nine dates listed in Part 2 of the Statement of Claim. Rule 32 entitled "Overtime" contains eight sub-paragraphs and one Note and refers to Rules 29, 27 and 35, and Article V of the National Vacation Agreement.

Before this Board Carrier contends that during handling on the property Petitioner's representative refused to discuss the specific section of Rule 32 that was allegedly violated by Carrier, or the theory relied upon by Petitioner in alleging that any part of Rule 32 was violated. This contention is not denied by Petitioner. They do, though, in their submission zero-in on paragraph (g) of Rule 32. However, they fail to explain their theory on the application of paragraph (g) of Rule 32 to the instant case. In Award 13741, Referee Dorsey, we held:

"We are of the opinion that when, on the property, a claim is made stating that an agreement has been violated without specifying the rule(s) allegedly violated and Carrier responds that it is not aware of any rule prohibiting the action complained of, the burden shifts to the Organization to particularize the rule(s).

It is axiomatic that: (1) the parties to an agreement are conclusively presumed to have knowledge of its terms; and (2) a party claiming a violation has the burden of proof.

When a respondent denies a general allegation that the agreement has been violated for the given reason that it is not aware of any rule which supports the alleged violation, the movant, in the perfection of its case on the property, is put to supplying specifics. It is too late to supply the specifics, for the first time, in the Submission to this Board - this because: (1) it in effect raises new issues not the subject of conference on the property; and (2) it is the intent of the Act that issues in a dispute, before this Board, shall have been framed by the parties in conference on the property.

Upon the record, as made on the property, we are unable to adjudicate the merits of the alleged violation. We will dismiss the Claim."

In this dispute, we will follow Award 13741 and dismiss the claim.

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

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*E. A. Killen*  
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1972.