

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20135
Docket Number MS-20320

Joseph A. Sickles, Referee

(Albert C. Foose et al
PARTIES TO DISPUTE: (
(Cuyahoga Valley Railway Company

STATEMENT OF CLAIM: This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of our intention to file an ex parte submission on April 30, 1973 covering an unadjusted dispute between us and the Cuyahoga Valley Railway Co. involving the Question:

Cuyahoga Valley Railway Co. Grievance or Time Claim Number 1315 dated January 4, 1973 and signed by Albert G. Foose, Clerk: further described as George Miller who works 10:00 P.M. to 6:00 A.M. reported off work on January 2, 1973 for one day, at which time you worked Hank Tromski at regular pay. Whereby Greg Slepko was the senior available qualified employee entitled to work under the equalization of overtime under Article XVII, para 5 (a) sec. (3).

We are asking Cuyahoga Valley Railway Co. to pay Greg Slepko in accordance to our current agreement for the hours worked by Hank Tromski. (Which would be time and one half) We are also asking Cuyahoga Valley Railway Co. to review all Grievance or Time Claim disputes pursuant to Article XVII, Sec. 5 (a) that have been denied previously by the company using the same denial basis as recorded by the company's agents in Grievance or Time Claim Number 1315. Furthermore, we are asking the Cuyahoga Valley Railway Co. to comply in the future with Article XVII, Sec. 5 (a) in its entirety. We, Kenneth K. Simon, Greg Slepko, Donald E. Miner, Donald F. Mondrach, and Albert G. Foose constitute the majority of clerks currently employed by Cuyahoga Valley Railway Co., Cleveland, Ohio, and have appointed and authorized Albert G. Foose to represent us and to expedite a written "Notice of Intent" to the National Railroad Adjustment Board.

OPINION OF BOARD: On March 30, 1973, a Notice of Intent to submit this claim ex parte was filed by individual employees. They demonstrate that a grievance was submitted to, and denied by, Carrier on January 4, 1973. A January 15, 1973 appeal was allegedly ignored; which prompted the employees to appeal to this Board.

However, certain documents exchanged on the property by the Carrier and Organization suggest a different handling of the dispute.

It appears that on January 10, 1973, the Organization noted an appeal to the January 4, 1973 denial. In February, the Carrier and Organization discussed the claim, but were not able to resolve same (Confirmed in writing on March 22, 1973). On March 29, 1973 (the day before the Notice of Intent was

submitted), the Organization's representative appealed the claim to the Director of Industrial Relations' "step of the procedure" and requested a conference. On May 16, 1973, the parties conferred and disposed of the claim by agreement (confirmed in writing on June 4, 1973).

In their Rebuttal Submission, the employees raise numerous "testimonial" assertions dealing with "authority of the employees to act in this matter," as well as other allegations of "fact." It is well established that this Board is barred from consideration of issues raised here for the first time and that charges and assertions not raised on the property may not be considered by this Board. See Award 20132.

The grievance procedure of the Agreement is, to some extent, abbreviated, but a review of the entire record demonstrates that the parties to the agreement have a "usual manner" of handling disputes to the Chief Operating Officer of the Carrier designated to handle such disputes.

The employees recognize that they request us to ignore that procedure. They argue that their action of submitting the matter to this Board automatically conferred jurisdiction upon us, and consequently, nullified the operation of two sections of the printed agreement. We find no authority to suggest that in this type of a dispute an individual employee may nullify the terms of an agreement between a Carrier and organization.

We do not question that under appropriate circumstances an individual may invoke the jurisdiction of this Board. At the same time, we seriously question that individual employees may, by unilateral action of filing a Notice of Intent, preclude an Organization from prosecuting grievances (in the usual manner) with its Carrier, concerning disputes arising under its agreement. While the organization is engaged in that pursuit, the individual employees must defer any appellate rights to this Board which they may have. The Railway Labor Act and the regulations of this Board require full compliance with procedures governing the processing of claims on the property before submission here.

Because the record shows that the Notice of Intent was filed prior to final disposition of the claim by the authorized representatives of the parties on the property, we find that the claim was prematurely submitted and must be dismissed. See Award 18110 (Dorsey). See also Award 19751 (Lieberman).

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 lacks jurisdiction over the dispute involved herein.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

AW. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1974.