

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20163  
Docket Number MW-20157

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it abolished the position of pumper at Shelby, Kentucky and assigned or otherwise permitted Water Supply Mechanic Early Brooks to perform the pumper's work (System File C-TC-49/MG 1303).

(2) Pumper W. F. Hardin be compensated for all wage loss suffered since the abolishment of his position on November 5, 1971.

OPINION OF BOARD: In November, 1971, Carrier unilaterally abolished Claimant's "pumper" position.

The Organization urges that a Carrier may not abolish a position if any work remains to be done, absent agreement of the parties. Carrier asserts that it may, in an exercise of managerial discretion, abolish a position, unless precluded by the Schedule Agreement. The parties have presented conflicting authority in this regard.

Carrier also urges that the claim be dismissed because Claimant failed to specify, on the property, any rule which was allegedly violated.

We stated, in Award 19833: "Determinations of Rule violation should, wherever possible, be made on the specific merits of each individual case." We further noted, in the same Award, that the parties do not always provide us with the essentials to realize that goal.

In a "Questionnaire Regarding Grievances", Claimant cited a violation of Rule 34. That document was assumedly presented to the Carrier, on the property, because the Division Engineer noted that "There was no violation of Rule 34 of the Agreement as contended by you....". No other rule was cited on the property as pertains to this dispute.

We have studied Rule 34 at length, but are unable to discern any applicability of it to the dispute in question. In its Submission to this Board, the Organization states:

"Controlling here are Rules 1(a), Sections (a), (b), (c) and (h) of Rule 2, Rule 3(a) and Rule 18(a)...."  
(underscoring supplied)

The Organization has not urged, in any documents submitted to this Board, a violation of Rule 34, and, as noted, Rules 1, 2, 3 and 18 were never raised on the property.

Recitation (on the property) of a Rule which has no materiality to the dispute, must be considered in the same light as a failure to recite any rule. We have noted in Award 19855 that failure to cite a Rule, on the property, requires a dismissal. Further, we noted in Award 19857 that specific citations in the Submission to this Board fail to cure the earlier deficiency. See also Awards 18964 (Dugan) 13741 (Dorsey) and 15835 (Ives). Accordingly, we will dismiss the claim.

Inasmuch as this claim is disposed of on procedural grounds, no determination is made concerning the issues raised by the parties dealing with the merits of the dispute.

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: A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1974.