

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21331

Docket Number MW-21386

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(St. Louis-San Francisco Railway Company

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

(1) The Agreement was violated when, on Saturday, July 6, 1974, an Assistant Foreman was used to operate the electro-matic switch tamper No. MG-991-C2 instead of using the regularly assigned operator thereof (Jimmy L. Young) (System File D-8366/B-1025).

(2) Claimant Jimmy L. Young shall now be allowed 11-1/2 hours' pay at his time and one-half rate because of the aforesaid violation.

OPINION OF BOARD: During the handling on the property the Organization contended that two specific provisions of the agreement were violated when Carrier failed to call Claimant to perform the work involved.

Carrier, during the handling, asserted that the claim was "lacking in agreement support."

It is clear that the two provisions, Article 2, Rule 3 and Article 2, Rule 8 have no application to the claim.

In its submissions before this Board, the Organization asserted additionally that Article 5, Rule 6(1) was also violated. Whether or not Article 5, Rule 6(1) has merit cannot be determined by this Board. There are numerous awards of this Board that have consistently held that failure to cite specific rules violations during the handling on the property precludes consideration at the Board level.

In Third Division Award No. 20064 this Board held:

The foregoing shows that the rules mentioned on the property were Rules 12 and 22(f). However, in the claim presented to the Board, Rules 12 and 22(f) are not mentioned and instead the claim is now predicated on Carrier's violation of Rules 2(a), (f), 3(a), 6(a) and 57. On these facts there can be no doubt that the claim as presented to the Board is not the same claim that was handled on the property and, consequently, there is no proper claim before the Board for its consideration. The employees have the responsibility and burden to cite the rules and agreement language relied upon during handling on the property. This, of course, is a fundamental due process right of the other

party, and where the rules are not cited, discussed, or in some way stated on the property, the omitted rules cannot be supplied for the first time in the submission of claim to this Board. We conclude therefore that the claim as stated is not properly before the Board and, accordingly, we shall issue a dismissal Award. For similar rulings see Award Nos. 15835, 19857, 19858, 19902, and 19970.

Under the circumstances, the Board has no alternative but to 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:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1976.

