

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22706
Docket Number CL-22550

Richard R. Kasher, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employes
(
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8554) that:

(a) The Carrier violated the terms of the General Clerical Agreement and the Local Letter Agreement dated November 22, 1972, when it failed and/or refused to train Nelson Edwards, James Dale, Carol Burdo, Gerald Nault, Edwin J. Rosa, and Janice Womack as Operator-Leverman and,

(b) The Carrier shall now compensate Nelson Edwards, James Dale, Carol Burdo, Gerald Nault, Edwin J. Rosa, and Janice Womack for any loss in earnings sustained as a result of junior employes being trained and utilized on Operator-Leverman positions as a result of Carrier's failure or refusal to train such employes.

OPINION OF BOARD: Claimants, all employes with clerical seniority, sought to become qualified as operators under the terms of a November 22, 1972 Letter Agreement and Michigan State Law (Public Act 1911) both of which concerned the training for operators' positions. Of the six individuals who are Claimants, at least four were able to pass written and oral examinations on the Book of Rules and, at various times, began the specified thirty (30) day training period. It is of note that the thirty (30) day training period need not be consecutive.

Four Claimants did complete their training, but only after the months of July, August and September, 1975, during which months a junior employe was trained as an operator under the terms of the Letter Agreement and the Michigan Law.

The Organization argues that the junior employe was improperly given preference over the Claimants in being able to complete her training first. The Organization also claims that the Carrier violated the Agreement by "arbitrarily and unilaterally terminating the training of the Claimants as Operator-Levermen."

The Organization acknowledges that the training was initially delayed due to a shortage of extra employees, but argues that, once the employees had begun their training, the Carrier was obligated to complete the training.

The Organization concludes by arguing that the Carrier did not comply with the provisions of Addendum No. 20. The Organization states that the Carrier refused to train the Claimants under the Addendum and instead trained a newly-hired employee.

In its rebuttal, the Organization rejects the Carrier's argument that the claim is vague and indefinite by arguing that the issue was not raised on the property. The Organization further argues that the Carrier was "well aware of what the claim encompassed" by virtue of the following statement made in a March 22, 1977 letter:

"This refers to your March 14, 1977 letter, File: Det-436, concerning claim in behalf of James Dale, Carol Burdo, Gerald Nault, Edwin Rosa, Janice Womack, Nelson Edwards and others, account Carrier failed to train them as Operators under the provisions of the General Agreement and Letter Agreement dated November 22, 1972."

The Organization also rejects the Carrier's argument that the Claimants failed to specify any particular dates on which violations occurred. From the first filing of the claim, the Organization argues, it was clear that the claim was for the time (shown on the Carrier's records) that the junior employee was afforded training as well as the time that the junior employee worked operator positions in preference to the Claimants.

The Organization notes that, contrary to the Carrier's arguments, the claim was a continuing violation. A Third Division Award (10379) stating that a continuing violation need not be on consecutive days is cited.

The Organization takes exception to the Carrier's statement that the Letter Agreement does not specify that employees will be trained in seniority order. The Organization argues that "all rules of the Agreement between the parties are predicated on seniority, including the preservation and assignment of work in seniority order."

Finally, the Organization argues that it was of no consequence that the Letter Agreement was cancelled by the Carrier on June 11, 1976.

The cancellation was after the Claimants had renewed their request for training.

The Carrier makes the threshold argument that the Board lacks jurisdiction to rule on the claim for the following reasons:

- (1) The claim is vague and indefinite, and no specific dates have been claimed by the petitioners, and the extent of compensation claimed has not been explained;
- (2) The petitioner has failed to cite any specific rule of Clerks' General Agreement No. 9 or any other agreement which is alleged to have been violated;
- (3) This is not a proper or a continuing claim; and
- (4) The claim as made is for six (6) separate claimants because of the use of one Employment Date Clerk to train as an operator.

The Carrier argues that the Organization has presented no claim upon which this Board can rule. The Carrier contends that there is no date in the Statement of Claim; there is no cause of action; there is no rule cited as having been violated; there is no remedy outlined; and, there is no proof offered of what took place. The Carrier cites a number of Third Division Awards (including 12366, 16675, 18040, 20147, 19857 and 19970) which stand for the principle that claims are improper where no specific dates are cited, no rule is cited, or the claim is vague and indefinite.

The Carrier argues, on the merits, that there is, in fact, no rule to prohibit it from training the junior employee; that the case is moot since the employees who wanted to complete the training have done so; that the Organization has not met its burden of proof; and, that the training was never terminated, but was delayed or not completed as a result of actions by the Claimants.

In making its affirmative defense, the Carrier has taken on the burden of proving that the claim should not be adjudicated.

The Board finds that the Carrier is correct in stating that there is no date in the Statement of Claim. In fact, despite the Organization's clarification in its rebuttal, it is still not clear what the exact dates were that the Claimants suffered as a result of the Carrier's actions.

It is not sufficient to state that the Carrier has the dates in its records. Although joint checks of records are appropriate in certain circumstances, such a procedure is not appropriate at this Board's level.

The Organization does state (for the first time) some cause of action in its rebuttal. However, here too it is not sufficient to merely state that six claimants lost pay as a result of the training of a junior employee. There must be a specific indication of how each employee's wages would have been different had the Carrier not taken the action that it did. This information is necessary if a remedy is to be fashioned; without the information it is fruitless for the Board to proceed.

The excerpt from the March 22, 1977 letter which the Organization cites in its rebuttal does not clarify "what the claim encompassed." It is merely a rephrasing of the Statement of Claim.

While the Organization cites the Letter Agreement and Addendum No. 20 as having been violated, it does not specify what provision of that agreement prevented the Carrier from taking the action that it did. The Organization's response that "all rules of the Agreement...are predicated on seniority" is a principle that is not joined to any language of the cited sections of the allegedly violated Agreements.

Finally, the Board notes that the Carrier did challenge the vagueness of the Organization's claim on the property. In the Carrier's first substantive reply, on December 3, 1975, it argued that the Organization did not have a clear claim and that the employees that wanted the training had received it. We do not rule on whether the Carrier was correct. We find that this is not an issue raised for the first time.

In conclusion, the Board has been given no dates, no specific cause of action and/or no specified contractual violation upon which it can adjudicate the claim. Consequently, the matter must be dismissed.

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;

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

That the Claim should 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 11th day of January 1980.