

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26290

Docket Number MW-25990

Irwin M. Lieberman, Referee

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

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

1. The Carrier violated the Agreement when it required Machine Operators D. K. Roach, R. B. Miller, D. A. Eastham and R. L. Barcus to furnish tools, with which to repair and maintain machines, which had not theretofore been customarily furnished by machine operators (System File C-M-1775/MG-4127).

2. Because of the aforesaid violation, the Carrier shall now reimburse Machine Operators D. K. Roach, R. B. Miller, D. A. Eastham and R. L. Barcus for the cost of tools furnished by them used to maintain and repair the Carrier's machine."

OPINION OF BOARD: In a Bulletin dated February 29, 1980, certain positions were advertised including four Equipment Operator positions. The Bulletin contained in the "Remarks" section the following:

"Equipment Operators shall maintain cleaning rags, small tools and other necessary material to keep their equipment clean and properly maintained."

Petitioner notified Carrier that the requirement indicated above was a new policy and constituted an expansion of the duties and responsibilities of the employees involved and was contrary to the Agreement.

Petitioner argues that Rule 66, the Classification Rule, provides that the Roadway Machine Operator group was to be used to operate the heavier machines but nowhere does the Rule provide that those operators would be used to repair those machines. Furthermore, it is maintained that it had been a historic and customary practice that Roadway Machine Operators were not required to provide any tools at their own expense.

Carrier argues first that the dispute herein should be dismissed as it is not a proper Claim. Carrier notes that at no time during the handling of this dispute on the property did Petitioner contend that the employees were entitled to any specific amount of compensation or reimbursement for the purchase of tools. Nor is there any indication of Carrier action after its advice to employees that they would be required to furnish the tools. Thus, Carrier maintains that the dispute does not fall within the definition of a Claim or grievance as contemplated by either Rule 21 (Discipline and Grievances) or the Railway Labor Act.

Carrier also insists that there was no violation of the Agreement and Petitioner has failed to sustain its burden of proof. Carrier cites Rule 70 of the Agreement as applicable.

"The Railway will furnish the employees such general tools as are necessary to perform their work, except such tools as are customarily furnished by skilled workmen."

Carrier maintains further that Machine Operators over a long period of time have been instructed on the necessity of having certain basic tools for the performance of their duties. This fact is supported by Carrier Bulletin R-18, dated March 15, 1971, which provides in relevant part:

"The Operator of a machine must be capable of making adjustments and minor repairs to the machine to which he is assigned, and must keep it clean, properly lubricated, and perform all other services to it which are normally expected of an Operator.

The Operator shall provide himself with cleaning rags, small tools and other necessary material to keep his machine clean and properly maintained  
. . . ."

As the Board views it, the Claim herein is seriously flawed. There are no facts in the record to indicate what the Claimants did, or what losses were sustained by them. In addition there is no specificity as to Rules alleged to have been violated. Even if the Claim were sustainable, there is nothing to sustain. As we have said on numerous occasions (e.g. Second Division Award 9685 and Third Division Award 20244), the Board does not decide hypothetical Claims and no Rules give employees the right to file grievances over events which have not yet transpired. The Claim must be denied.

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

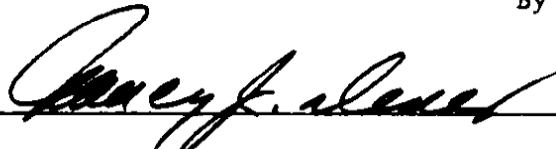
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

A handwritten signature in dark ink, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of April 1987.