

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26326
Docket Number MW-26281

Marty E. Zusman, Referee

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

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

(1) The Carrier violated the Agreement when, without thirty (30) calendar days' advance written notice to the General Chairman and without a conference with the General Chairman as required by Rule 8-1/2(a), it abolished the Bay City, Lansing and Benton Harbor Section Gangs effective December 1, 1983 (System File C-M-1699/MG-4444).

(2) Because of the aforesaid violation, Mr. M. Bowen shall be allowed two (2) days' pay at his straight time rate; Mr. J. Taylor shall be allowed four (4) days' pay at his straight time rate; Mr. M. Dean shall be allowed one (1) day's pay at his straight time rate; Messrs. R. Brooks, G. Dryer, D. Dryer, J. Moyer, T. Szweda, J. Shepherd and M. Schlutt shall each be allowed twenty-two (22) days of pay at their respective straight time rates and Mr. J. Birch shall be allowed twenty-one (21) days of pay at his straight time rate."

OPINION OF BOARD: On November 18, 1983, the Assistant Chairman wrote the Manager-Engineering a Claim on behalf of any employees who would be effected by a December 1, 1983 abolishment of forces in violation of Rule 8 1/2 (a). He noted that he had "been advised by men working at Bay City, Lansing and Benton Harbor" that there would be a December first force reduction.

The Carrier denied the above Claim on both procedural and substantive grounds. With respect to procedure, the initial declination advised that:

"...we find your claim submitted in advance of planned force reductions improper inasmuch as you were unable to provide any specific information with respect to employees involved, dates and places of subsequent displacements and time allegedly lost."

The Carrier later emphasized again that it declined the Claim since it was "presented to Manager-Engineering Rymer prior to the force reductions involved...." On merits, it denied the applicability of Rule 8 1/2 (a) and argued its abolishments were proper under Rule 8 1/2 (b).

This Board has carefully reviewed the procedural issue involved. Rule 24 (Discipline and Grievances), (h)(1)(A) states in pertinent part that:

"All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within sixty (60) days from the date of the occurrence on which the claim or grievance is based." (Emphasis added)

The Claim at bar was not presented "within sixty (60) days from the date of the occurrence," but in advance of the predicted occurrence. The language of the negotiated Agreement does not support such action and is specifically written to stipulate a claim on "behalf of the employee involved." The instant Claim was a "blanket time claim on behalf of any and all employees adversely effected by the series of displacements that will take place...." Nowhere in the handling on property did the Organization take issue or deny the procedural objection of the Carrier.

This Board finds that the "Claim" was premature and failed to follow the grievance procedures as negotiated. As such, the Claim is barred and this Board cannot reach the merits of the case. This ruling is consistent with the logic of Second Division Award 9685 which pertained to the same issue with different circumstances and contract language. As that Award stated "we cannot ... go beyond what the parties themselves have bargained and sanction a right to grieve over events which have not yet taken place."

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 Employee 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 is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 13th day of May 1987.