

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28596
Docket No. MW-28162
90-3-87-3-704

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Soo Line Railroad Company

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

(1) The Carrier violated the Agreement when it reduced the number of section laborers in the crew consisting of Section Crew Nos. 105 (Waukesha), 111 (shops Yard(), 112 (Oshkosh), 113 (Neenah), 118 (Stevens Point), 120 (Marshfield), 188 (Soo, Michigan), 148 (Chippewa Falls), 154 (Ladysmith), 210 (Barron), 137 (Ashland), 181 (Gladstone), 173 (Rhinelander) and 166 (Marquette) effective on March 14, 1986 (System File R238/800-46-B-246).

(2) The claim as presented by General Chairman G. Western on March 17, 1986 to Regional Engineer G. J. Guthrie shall be allowed as presented because said claim was not timely disallowed by General Manager-Engineering G. A. Nilsen (appealed to him on May 16, 1986) in accordance with Rule 13.

(3) As a consequence of Parts (1) and/or (2) above, each section laborer affected by the force reductions described in Part (1) above and their successors as the senior furloughed laborers from the section crews enumerated in Part (1) hereof, shall be made whole for all straight time and overtime wage loss suffered and shall have all vacation, fringe benefits and other rights restored until this violation is corrected."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimants hold seniority as section laborers. On March 4, 1986, the Organization contends that Carrier reduced the normal force allowance to provide off-track utility tractor operator positions in violation of a January 1, 1985 Memorandum of Understanding between the parties which states in pertinent part as follows:

"MEMORANDUM OF UNDERSTANDING
REGARDING ASSIGNMENTS OF OFF-TRACK
UTILITY TRACTORS

EFFECTIVE DATE: January 1, 1985

Each Off-track Utility Tractor Operator's position will be assigned a headquarters point at an existing section crew location and such positions will be assigned to the senior, qualified, available employe in the section crew at the crew location where the tractor is headquartered. An employe working as a tractor operator may be assigned to perform section-man's work when not operating the tractor and will be compensated under Rule 31, Composite Service.

Line crews will not be reduced below the crew consists listed in Appendix F and yard crews will not be reduced below their normal force allowance to provide a tractor operator when the tractor operator is entitled to more than one full day's pay at the tractor operator's rate under Rule 31, Composite Service."

The Organization further contends that the Claim should be allowed as presented on procedural grounds, since Carrier did not timely respond to the appeal of the Claim as required by Rule 13.

Carrier opposes the Claim on several grounds. First, it objects to the Claim because it is vague, indefinite and uncertain. Second, on the merits, Carrier asserts that the Organization never established that there was a Rule violation. The Organization has the burden of substantiating its Claim, Carrier observes, and in this case, it did not meet that burden.

We have closely examined the record in the instant Claim and must conclude that Carrier is correct that the Claim is barred on procedural grounds. We are cognizant of those prior cases in which the Board has held that Claimants need not be specifically named in a claim in order for the claim to be sufficient, but that the aggrieved must be described with sufficient particularity so that the Carrier can readily identify same. (See, e.g., Third Division Award 11372.) It is the Organization's burden, however, to prove that the identity of the aggrieved can be readily ascertained by the Carrier. In this case, while the Claim describes an incident, cites an Agreement alleged to have been violated and the date the alleged violation commenced, it is not at all clear who was aggrieved. Item 3 of the Claim refers to "... each section laborer affected by the force reductions and their successors as the senior furloughed laborers from the following crews ..." In the Organization's first appeal, the General Chairman contrarily noted:

"I am not aware of any adjustments in normal
force allowances on the Soo Line...."

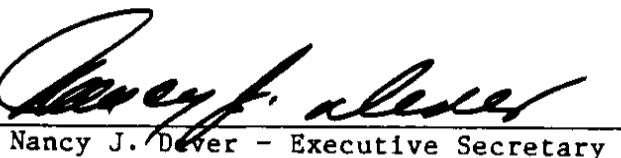
Carrier has stressed that it is unable to ascertain from the above statements which employees were aggrieved, and given the vague and conflicting references by the Organization, we concur that the identity of the Claimants cannot be readily ascertained. The Claim will be dismissed on that basis.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1990.