

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29005
Docket No. CL-29063
91-3-89-3-496

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Grand Trunk Western Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Organization (GL-10397) that:

1. Carrier violated the Working Agreement, particularly Rule 33, among others, when the Terminal Manager of Railport, Chicago, with whom initial claim dated December 21, 1987, was timely filed, failed to give reason for disallowing the claim.

2. Carrier shall be required to allow the claim: In behalf of the clerks at Railport involved in the handling of work related to GTW trains 204 and 205, for eight (8) hours at the straight time rate of the positions involved, and the return of said work, for November 3, 1987, and each subsequent day thereafter that the violation occurs. 'As presented' in accordance with the procedural requirements of Rule 33."

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.

The Organization raises a procedural issue which must be considered at the outset. This argument is based on Rule 33(a)(1) which states:

"(a) All claims or grievances shall be handled as follows:

1. 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 60 days from the date of the occurrence on which the claim or grievance is based.

Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified the claim or grievance shall be allowed as presented but this shall not be considered as a precedent or waiver of the contention of the Carrier as to other similar claims or grievances."

(Emphasis added)

In connection with this Rule, the Organization notes that the Carrier did not "and the Board observes this fact is undeniable" give any reasons for declining the claim at the first step. The Organization contends that giving reason for the declination is an absolute requirement and, in the absence of this requirement, the claim, as Rule 33(a)(1) stated, must be sustained as presented.

The Board, but for one fact, would find the Organization's argument as set forth above persuasive. This is the fact that the claim in the first instance never identified the claimants. This is a fact noted by the Carrier on the property. They also argued that this was a defect which voided the claim in the first instance.

The Board agrees with the Carrier. The claim cannot be sustained for most practical reasons. The claim neither identified the Claimants by name or even identified how many claimants there were. In view of the lack of specificity as to the claimants, we are left, even though we were initially inclined to sustain the claim, of not knowing even how many claimants there are. Are there two "clerks at Railport"? or twenty? or two hundred? The Board is not inclined to sustain a claim whose magnitude is not known or apparent.

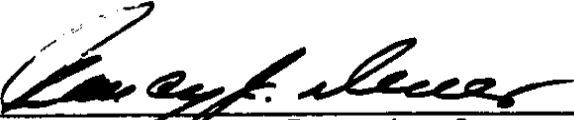
In summary, the claim was void from the outset because it was vague and indefinite as it did not identify the claimants by name or identify how many there were.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of September 1991.

*LABOR MEMBER'S DISSENT TO
AWARD 29005, DOCKET CL-29063
(REFEREE VERNON)*

A Dissent is required in the case at bar because the Majority Opinion has erred and issued a decision which is unreasonable based upon the facts set forth on the property and prior decisions of this Board.

The Majority first determined in connection with Rule 33 (a) (1) the following:

"...the Organization notes that the carrier did not, and the Board observes this fact is undeniable, give any reasons for declining the claim at the first step..."(Underlining our emphasis)

After concluding the aforementioned the Majority then went on to state:

"...The Board, but for one fact, would find the Organization's argument as set forth above persuasive. This is the fact that the claim in the first instance never identified the claimants..."

The Majority conclusion is not persuasive inasmuch as paragraph 2 of the Statement of Claim clearly stated the following.

"Carrier shall be required to allow the claim: In behalf of the clerks at Railport involved in the handling of work related to GTW trains 204 and 205, for eight (8) hours at the straight time rate of the positions involved, and the return of said work, for November 3,1987, and each subsequent day thereafter that the violation occurs. 'As presented' in accordance with the procedural requirements of Rule 33."

The record is clear the claim requests compensation for those clerks who did the specific work related to GTW trains 204 and 205. It was not necessary to name each and every Claimant. This Board has repeatedly sustained Claims for unnamed Claimants and in this

instance it would have been proper to sustain the Claim and direct the parties to check Carrier records as to determine actual wage loss and Claimants in accordance with past Third Division Awards such as 12133,14037,14186,15056, and 16067.

For the foregoing reasons Award 29005 carries no precedential value and requires strenuous dissent.


William R. Miller

Date September 26, 1991