

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Maine Central Railroad Company

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

(1) The Carrier violated the Agreement when it assigned and/or otherwise permitted Boston & Maine Corporation forces to perform truck driving work on April 3, 4, 5, 6, 7 and 8, 1987.

(2) The Carrier also violated Article IV of the May 17, 1968 National Agreement when it did not give the General Chairman advance written notice of its intention to contract said work.

(3) As a consequence of the aforesaid violations, Truck Driver R. R. Hartsgrove shall be allowed twenty-four (24) hours of pay at his straight time rate of pay and fifty-nine (59) hours of pay at his time and one-half overtime rate of pay."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 Claimant seeks compensation for work performed on the Claim dates by an employee under a different Agreement. The Claimant contends that he should have been assigned to the work.

In its submission, the Carrier raises a number of procedural issues as to the Organization's failure to meet time limit requirements under the Claim handling procedure. As noted by the Organization, these issues were not raised in correspondence on the property and thus may not be considered by the Board.

However, the Carrier did advise the Claimant, in response to his Claim, as follows:

"Per Rule 6-a of our current agreement your name was removed from the rosters of the Maine Central Railroad on October 31, 1986 as you have not performed service for the Maine Central Railroad during the previous two years. As you are no longer an employee of the Maine Central Railroad your claim is without merit and is hereby denied."

The Organization now argues that the Claimant's name was improperly removed from the roster, because he had received payment for a Claim during the cited two-year period. This, according to the Organization, should have started a new two-year period (during which the Claim herein arose).

The difficulty with this is that no timely protest was made as to the removal of the Claimant's name from the roster. The Carrier provides a copy of an October 31, 1986 letter to the Claimant notifying him of this action. While the Organization points out that this letter was not exchanged during the Claim handling procedure, the fact remains that the Carrier did refer to its action in the initial Claim reply.

Thus, the question of whether the Claimant was properly removed from the roster is not before the Board. In the Claimant's resulting status as former employee, the Claimant has no standing to press the Claim as presented herein.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of January 1992.