

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29462
Docket No. MW-29480
92-3-90-3-410

The Third Division consisted of the regular members and in addition Referee Hugh G. Duffy when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc. (former Seaboard System Railroad)

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

(1) The Agreement was violated when the Carrier assigned Atlanta-Waycross Division Group A Machine Operator G. W. Sills instead of Raleigh-Rocky Mount Division Machine Operator B. C. Steen to operate a motor grader on the Raleigh-Rocky Mount Division in the vicinity of the Hamlet Terminal beginning May 15, 1989 and continuing [System File BCS-89-38/12(89-756) SSY].

(2) As a consequence of the aforesaid violation, Mr. B. C. Steen shall be allowed two hundred eighty (280) hours of pay at the Group A Machine Operator's rate."

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.

Before considering the merits of this dispute, the Board first must deal with a procedural objection raised by the Carrier. In its denial letter of November 6, 1989, the Carrier asserted that the claim:

"... has not been handled in accordance with the mandatory requirements of 45 USC 153, First (1) of the Railway Labor Act and the Grievance Handling Rules of the Schedule Agreement which requires claims to be appealed by the duly authorized representative of the employees--the General Chairman. *** Your attempt to progress the aforementioned claim in lieu of the General Chairman deviate from the usual and customary manner prescribed, and as such are barred from further consideration by this office."

We find Third Division Award 28249 involving the same issue between the parties to be controlling precedent in this matter. In that case, as in the present one, the claim was appealed to the Carrier's Director of Labor Relations by the Division Chairman. The Board concluded that the appeal was procedurally flawed since it did not come from the General Chairman as was the usual and customary procedure on the property.

As stated in Second Division Award 12139:

"It is established in this industry, that we should not disturb the findings of a prior Award which resolves a dispute between the same parties concerning the same issue, unless the prior finding is palpably erroneous. This is the case even if the second Award might have reached a contrary result had we heard the case in the first instance. The stated concept is geared to insure a predictability in the resolution of labor-management disputes."

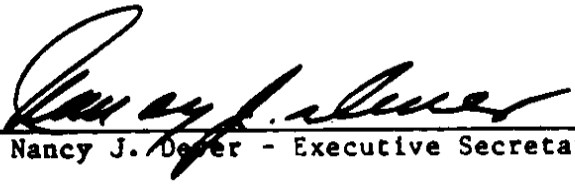
We cannot find that the cited Award is palpably erroneous since it finds basic support in Appendix F to the Agreement, a letter dated February 23, 1977 discussing claims handling procedures between the parties. Accordingly we cannot reach the merits of this dispute and the claim will be dismissed.

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 7th day of December 1992.