

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30414
Docket No. CL-29764
94-3-91-3-147

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

(Transportation Communications
(International Union
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Louisville
(and Nashville Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood
(GL-10552) that:

1. Carrier is in violation of the Clerical Agreement at Birmingham (sic), Alabama, September (sic) 18, 1988, by allowing and/or requiring Yardmaster J. L. Rogers to check cars in Track 11, South Yard.
2. Claimant, Senior Clerk Available, extra clerk in preference, shall now be compensated eight (8) hours' pay at the pro-rata rate of Utility (PICL) Clerk, Position No. 205, for August 18, 1988 in addition to any other compensation that this Claimant may have already received on this day, returning this work to the clerical employees covered by this Agreement."

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 employee 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 record reflects that the United Transportation Union, Yardmaster Department was duly notified of the pendency of this dispute and afforded an opportunity to file a Submission. It did not, however, file a Submission.

The Organization in its initial on-property claim presentation and again when listing the claim with the Board referred to the claim date as September 18, 1988, when in reality the claim date was August 18, 1988. The Carrier throughout the handling of the dispute voiced no exception to the improper date.

When the Carrier indicated in its on-property denial of the claim that the list of cars made by the Yardmaster was copied "from the printouts furnished by the Clerical department of cars when they move to the South Yard," the Organization offered not one word of challenge or refutation to this assertion until it did so in its Submission to the Board.

During the on-property handling of this claim, the Carrier at no time took any exception to the amount of the claim or to the fact that there was no individually named Claimant. Not until the dispute was presented to the Board did Carrier take exception to both the alleged excessive nature of the claim as well as to the "unnamed claimant" issue.

All of these items indicate a lack of attention by all parties to the basics of claim handling and to the mandate "to exert every reasonable effort . . . to settle all disputes . . ." as set forth in Section 2, First, of the Railway Labor Act.

From the record as it exists before the Board, it appears that a Yardmaster at Birmingham, Alabama, made a list of 28 cars which were sitting on Track #11 in the South Yard. This list of cars never left the Yardmaster's office, but rather, "was locked up in his office on his clipboard." The Organization contended that the Yardmaster "checked" the cars "for the purpose of switching track (sic)." There is no evidence or argument to define what is meant by "checked," but from what is argued in the case it can be presumed that the Organization is contending that the Yardmaster walked the track and listed the cars as they sat on Track #11. Carrier acknowledged that the Yardmaster made a list of the cars, but argued that the list as written by the Yardmaster was made by copying the car numbers from a printout of the cars on Track #11 which had previously been prepared and furnished by clerical employees. The Carrier continues by insisting that the list was used by the Yardmaster solely for his own information and use, was not distributed to anyone else and served no record purpose. This is the sum total of "evidence" which properly exists in the case file.

It is too well established to require individual Award citations that the petitioning party in a dispute has the burden of proving every essential element of the claim. When the Carrier in this case denied that the Yardmaster did anything more than make a list of cars for his own use from a previously prepared listing which had been compiled by the Clerks whose job it was to prepare such lists, the Organization was then required to come forward with probative evidence to support its claim. Mere assertions, without more, are not acceptable as proof. The Organization's reliance on the hand-written statement of the Yardmaster cited and relied on by the Organization for the first time in its Submission to the Board, is not only untimely, but also is not convincing, probative evidence that refutes Carrier's contentions. We are reminded in this case of the opinion expressed in Third Division Award 20290, to wit:

"We have searched the record at length, but have been unable to discover any evidence to demonstrate, or suggest, that any particular Yardmaster did physically check tracks or performed clerical duties at any designated time or place. Thus, we have before us only a presumption of a violation."

The Board cannot, and will not in this case, make a decision on the basis of presumption, conjecture or speculation. If the Organization's position is as strong as it argues, then it should have been an easy matter for it to have backed its position with something more than assertions and presumption.

In arriving at our decision in this case, we have given no consideration to the arguments from either party which were advanced for the first time before the Board. All such first-time arguments from either party are summarily dismissed.

From the record which properly exists, the Board is not able to conclude whether a violation of the Scope Rule occurred in this instance. We are, therefore, compelled to deny this claim for failure of proof.

AWARD

Claim denied.

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O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 8th day of August 1994.