

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30694
Docket No. SG-31136
95-3-93-3-128

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(The Atchison, Topeka and Santa Fe
(Railway Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen (BRS) on the Atchison, Topeka & Santa Fe Railway Company (ATSF):

Claim on behalf of S.S. Boehme, S.E. Ward, R.A. Gary, H.L. Walker, and G.W. Breeden for payment of four hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly Rule 12, when it failed to utilize the Claimants to perform service on their assigned territories on August 31, 1991. Carrier's File Nos. 91-14-11, 12, 13, 14 and 15. General Chairman's File Nos. 12-1023, 1024, 1025, 1028 and 1029. BRS File Case No. 9027-ATSF."

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 employe 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 the Board can give consideration to any of the arguments and contentions raised by the parties relative to the merits, or lack thereof, of this case, we must first address a fundamental deficiency which exists in this case which neither party to the dispute has chosen to address throughout the entire on-property handling of the claim.

The Statement of Claim to the Board alleges that a violation of the rules agreement occurred on August 31, 1991. However, the Organization's entire presentation on this claim - both during their on-property handling of the dispute as well as before the Board - deals with an alleged violation of the Rules Agreement which allegedly occurred on September 7, 1991.

The initial claims on this issue which were presented by the Organization on September 28, 1991, alleged as follows:

"* * *

- (1) On September 7, 1991, M.P. Bezdek was instructed to escort a wide load train across Mr. Boehme assigned territory to protect signal equipment.

* * *"

The same claim (with differences only in the escort's name) was presented separately for Claimants Ward, Gary, Walker and Breedon.

Carrier acknowledged receipt of the five (5) separate September 28, 1991, claim letters and denied each of the claims as follows:

"On August 30, 1991 Signal Supervisor Stull received a wire from Eulless requesting that a signalman escort a high-wide load from Arkansas City, Kansas to Gainesville, Texas on August 31, 1991. Mr. Stull arranged for M.P. Bezdek to escort the load from Arkansas City to Britton and S.L. Hovey to accompany the train from Britton to Gainesville."

Carrier's denial did not address the September 7, 1991, claim date as indicated in the initial claim letters.

When the Organization appealed the five claims to the highest appeals officer, they quoted Carrier's reference to the work which had been performed on August 31, 1991, but persisted in appealing and progressing their claims for the same work which they alleged had been performed on September 7, 1991. They made no explanation for or amplification of the difference in claim/work dates.

Throughout the entire handling between the parties - which included at least two claims conferences - neither party addressed the variance of dates.

It is a fundamental tenet of claims presentation and progression that the petitioning party must prove every essential fact of a claim and must be specific especially in regard to the exact date of the alleged violation. For a claim to be "handled in the usual manner" as required by the Railway Labor Act, as amended, it is mandatory that the correct date(s) of the alleged violation be identified by the party initiating the claim. The Board has no authority to presume what the correct claim is.

In this case, there is a total unresolved disagreement between the parties relative to the proper claim date. The parties made no apparent attempt to reconcile this claim date variance. The Board cannot correct the irreconcilable difference on such a fundamental issue. Therefore, without expressing any opinion concerning the merits of the parties' contentions, we will dismiss this claim for failure of the petitioning party to establish a correct claim date.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimants not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 31st day of January 1995.