

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30784
Docket No. CL-30847
95-3-92-3-821

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

PARTIES TO DISPUTE: (Transportation-Communications International
(Union
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(Southern Pacific Transportation Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Union that:

1. Carrier violated rules 1, 24 and 34 of the agreement on June 28, 29, and July 6, 1991, when it failed to call regular employee R. Devi to transport train crews in the Yuma switching yard and chose instead to use a taxi to perform these duties.
2. Carrier shall compensate R. Devi for two (2) hours at the time and one-half rate for June 28, two (2) hours at the time and one-half rate for June 29, and eight (8) hours at the time and one-half rate for July 6, 1991."

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.

This claim is premised on the Organization's allegations that: (1) Carrier failed to call a regular employee to transport train crews; (2) Carrier failed to timely deny the appeal; and (3) Carrier violated the Railway Labor Act when it denied the appeal prior to holding a conference.

It is not disputed that on June 28, 29 and July 6, 1991, Carrier used a taxi service to transport crew members. Claimant was regularly assigned to a clerical position at Yuma. The Organization filed a claim asserting that Claimant should have been called to perform the duties, and initiated a time claim for each day of the alleged violations.

The Regional Field Manager denied the June 28 and 29, 1991 claims stating:

"The facts in this case is [sic] that a taxi was used to transport a train crew because the only available carryall at Yuma was being fixed. It would not make sense to rent a vehicle so that you could drive this crew when other options are available to the Carrier."

He then denied the July 6, 1991 claim submitting:

"The facts in this case is [sic] that a taxi was used to transport these crews because the only available carryall at Yuma was hauling a crew to Gila, Arizona. It would not make sense to rent a vehicle so that you could drive these crews when other options are available to the Carrier."

According to the Organization, on August 12, 1991 it mailed an appeal of the claims, consolidating the claim dates at issue into one appeal. However, Carrier maintained throughout handling on the property and before this Board that it never received such correspondence. On January 25, 1992, the Organization reiterated its earlier claim, adding that Carrier had violated Rule 24 of the Agreement "by not responding to the claim within the prescribed time limits." Carrier answered, submitting that the Organization's latest correspondence was "well in excess of the sixty (60) day time limit set forth for appeal." Carrier further maintained that "without prejudice to Petitioner's procedural transgression," it did not violate any provisions of the Agreement when it permitted an outside contractor to haul crews on claim dates at Yuma. Finally, at the Labor Relations level, the Organization charged that Carrier had violated unspecified "provisions of the Agreement and of the Railway Labor Act when it denied the claim without first holding a conference."

Taking last things first, the threshold issue to be addressed concerns the Organization's allegation that Carrier violated both "The Agreement and the Railway Labor Act when it denied the claim without first holding a conference." Leaving aside the allegation of a statutory violation and assuming, arguendo timely filing, Rule

24 of the Agreement is silent regarding conferencing of a claim prior to rendering as intermediate disallowance.

The Railway Labor Act specifies that when a conference has been requested, it must be "scheduled "within twenty days." There is no evidence on the record proving that the Organization requested a conference. Moreover, this Board's primary authority is to interpret and apply collective bargaining agreements, not statutes. Therefore, that portion of the claim will not be addressed further.

Additionally, each of the Parties asserted that the other had not adhered to appropriate time limitations as provided for by Rule 24. Although the Organization asserted that it had sent correspondence to Carrier with regard to this issue on August 12, 1991, Carrier put the Organization to its proof by flatly denying receipt of such correspondence. Without the benefit of a signed affidavit of mailing or service, a certified mail receipt, or other evidence which would prove that the Organization did indeed send the letter, we are unable to sustain this claim on a procedural basis.

Finally, turning to the merits, it is clear this case must be denied because the Organization failed to meet its burden of proof.

AWARD

Claim denied.

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 6th day of April 1995.