

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31462  
Docket No. MW-32093  
96-3-94-3-495

The Third Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(Chicago, Central and Pacific Railroad Company

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

(1) The Carrier violated the Agreement when it failed to properly compensate Mr. D. J. Leadley for jury duty service he performed on May 28 and June 11, 1993 (Carrier's File BMW 93-023).

(2) As a consequence of the violation referred to in Part (1) above, Mr. D. J. Leadley shall be allowed ten (10) hours' pay at his straight time 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 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.

Claimant was regularly assigned as a Section Foreman headquartered at Waterloo, Iowa, working Monday-Friday from 7:00 AM to 3:30 PM.

The Carrier argues that the claim should be barred from handling by this Board, because the claim submitted to the Board is not the same claim as handled on the property. A review of the record reveals that in the handling on the property the dates the Claimant served on jury duty were May 4 and May 18, 1993, not May 28 and June 11, 1993 as presented to this Board.

It is not the Board's responsibility to correct the Submissions of the parties. It is clear the Organization's Submission is in error. In fact, its Submission never mentions May 4 or May 18. Due to the lack of evidence of any alleged violation of the Agreement on May 28 and June 11, 1993, we must dismiss the claim.

AWARD

Claim dismissed.

ORDER

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 25th day of April 1996.

LABOR MEMBER'S DISSENT  
TO  
AWARD 31462, DOCKET MW-32093  
(Referee Robert Richter)

The Majority's error in dismissing this case "... because the claim submitted to the Board is not the same claim as handled on the property. \*\*\*" is particularly egregious and requires dissent.

A review of the record reveals that the initial claim letter (Employees' Exhibit "A-1") cited May 28 and June 11, 1993 as the dates the Claimant received paychecks which were "shorted" and the next paragraph plainly references that on both dates in question, the Claimant "... did indeed attend Jury Duty." In addition, within his on-property appeal letter dated October 26, 1993, the General Chairman reaffirmed the jury duty dates as being "\*\*\* May 28, 1993 and June 11, 1993. \*\*\*" (Employees' Exhibit "A-3", Page 2 and Carrier's Exhibit "A", Page 7). Significantly, the Carrier took no exception to the dates initially claimed and subsequently reaffirmed by the General Chairman throughout the protracted on-property handling of this case. Hence, from an uncomplicated review of the record, the Organization's submission was not in error.

Nevertheless, while correctly finding that:

"It is not the Board's responsibility to correct the Submissions of the parties. \*\*\*"

the Majority incorrectly held that:

Labor Member's Dissent  
Award 31462  
Page Two


"\*\*\* A review of the record reveals that in the handling on the property the dates the Claimant served on jury duty were May 4 and May 18, 1993...."

Based on the above, the Majority dismissed the instant claim as not being the same as that which was presented on the property. Although jurisdictional arguments can be raised at any time, this dispute never focused on which dates the Claimant served on jury duty. Again, the record of this dispute reveals no mention of May 4 or May 18, 1993 during the on-property handling. Apparently, in a headlong rush to dismiss a valid claim, the Majority ignored the on-property record to mimic an erroneous argument raised for the first time within the Carrier's submission. Not only was the Carrier's argument new, the alleged evidence in support thereof was never presented for consideration during the handling of this dispute on the property. Instead, for the first time within its submission to the Board, the Carrier referenced and attached its Exhibit "C" wherein the dates of May 4 and May 18, 1993 were first mentioned as being the jury duty dates allegedly the subject of the instant claim. Clearly, the Majority considered such new evidence in order to reach its conclusion that the claim before it was not the same as that presented on the property. However, Circular No. 1 precludes any consideration of new evidence or argument and the Majority's disregard for this cardinal rule of the Board renders its findings palpably erroneous. Because the Majority's conclusions have no factual basis and/or were based on evidence not

Labor Member's Dissent  
Award 31462  
Page Three

considered or discussed during the on-property handling of this case, Award 31462 can be of no precedential value whatsoever. Therefore, I dissent.

Respectfully submitted,

  
Roy G. Robinson  
Labor Member