

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40241
Docket No. MW-37488
09-3-02-3-566**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

**(CSX Transportation, Inc.
PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees**

STATEMENT OF CLAIM:

“A claim on behalf of L. S. Cromer ID 187355 and Keith McDivitt ID 188368 because the Carrier violated the June 1, 1999 Agreement between CSX Transportation, Inc. and its Maintenance of Way Employees when the above Claimants were forced to occupy the same motel room.

Beginning in September 2001 Supervisor Blaydes instructed Mr. Cromer and Mr. McDivitt to occupy the same motel room. Mr. Cromer is assigned to a one man gang, 4X47 and Mr. McDivitt is assigned to a one man gang, 6NP6. Mr. Cromer is assisting gang 6K74 at Clinton, IN. [System File I60704501]

As a consequence of the violation, please advise when Mr. Cromer and Mr. McDivitt will place in single occupancy.”

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 were given due notice of hearing thereon.

The present case under two separate but similar Submissions has been brought to the Board nearly simultaneously not only by the Carrier, but also by the Organization. The present case was advanced to the Board by the Carrier and the case advanced by the Organization is listed under Docket MW-37679. Submissions by the Parties in each docket are essentially identical. As one would expect, the Carrier, in its Submission of the instant case, adopted the Organization's wording of the original claim.

This circumstance has already been addressed by the Board in Third Division Award 31388 decided by Referee Marx. In that Award, the Board found that, when faced with identical Submissions for two dockets, "the Board need rule on only one of the completed files." Irrespective of which Party files initially with the Board the burden of persuasion in any dispute remains the same. In this case the burden is with the Organization.

The Board is in agreement with Award 31388, to wit: because the burden of persuasion is on the Organization "it is more reasonable to review the matter based on the Organization's initiative." (See also Third Division Awards 31326 and 31327). In the case of Award 31388, the Submissions were docketed for hearing simultaneously. In this case, however, for reasons not clear on the record, the Docket initiated by the Organization was scheduled for a later date.

Under that circumstance, the Board finds that the process is most logically served by dismissing the instant case without prejudice and addressing the matter in Docket MW-37679 to avoid duplication of the Board's efforts.

AWARD

Claim dismissed.

Form 1
Page 3

Award No. 40241
Docket No. MW-37488
09-3-02-3-566

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 21st day of December 2009.