

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43599
Docket No. MW- 44392
19-3-NRAB-00003-170521**

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

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to reimburse Foreman J. Anteau for necessary medical fees incurred in direct association with his renewal of a CDL license on January 16, 2016 (Carrier’s File BMW-603 NRP).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Anteau shall now ‘... be reimbursed all fees incurred while undergoing medical testing at the direction of the Carrier in order to and necessary to maintain his CDL, however no less than \$482.00 paid by the Claimant and his healthcare insurer.’”**

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.

On March 9, 2016, the Organization filed a claim asserting that the Carrier violated the Agreement when it failed to reimburse the Claimant for out-of-pocket medical costs related to the maintenance of his Commercial Driver's License ("CDL"). The claim was progressed on the property in the usual and customary manner, including placement before the highest officer of the Carrier designated to handle such matters. The on-property record of the Carrier's denials of the claim and subsequent appeals by the Organization indicates that the final decision by the Carrier was on October 28, 2016. The Organization appealed that decision and filed its notice of intent with the Third Division. The claim is now properly before the Board for adjudication.

The Board first addresses the Carrier's assertion that the claim is procedurally defective and fatally flawed wherein it is vague and lacks the requisite specificity to establish a violation of the Agreement. It argues that the claim should be dismissed since it is *void ab initio* (invalid at inception).

A review of the record reveals that the Organization has failed to establish a *prima facie* cause of action. It argues that the Carrier violated the Memorandum of Understanding ("MOU"), dated August 1, 2009, wherein it provides for reimbursement for all fees necessary to maintain a CDL. The Organization cites the MOU in its written *ex parte* submission and argument to the Board. However, the on-property record is devoid of any such documentation in support of the claim.

It is a well-established principle in the industry, in accordance with the applicable rules of the National Railroad Adjustment Board's Circular No. 1, dated October 10, 1934, that any evidence presented to the Board must first be developed during the on-property handling of the dispute. Circular No. 1 in pertinent part reads, "... all documentary evidence submitted in exhibit form, quoting the agreement or rules involved, if any; and all data submitted in support of employee's position must affirmatively show the same to have been presented to the carrier and made part of the particular question in dispute." Legions of arbitral awards have upheld this rule and refused to consider such documentation as relevant evidence. In the matter presented here, the absence of a valid agreement in the record renders the claim unsupported. As such the Organization has not established a *prima facie* basis for its claim and therefore, cannot fulfill its burden of proof.

In summary, we have reviewed and carefully weighed all the arguments and evidence in the record and have found that it is not necessary to address each facet in these Findings. We find that the Organization has not established that the Carrier violated the Agreement.

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 17th day of May 2019.