

NATIONAL MEDIATION BOARD
WASHINGTON, DC

PUBLIC LAW BOARD NO. 7163

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE

AND

CSX TRANSPORTATION, INC.

Docket No. 103
Employee: R. Daniel

Neutral Member: Barbara Zausner
Carrier Member: Robert A. Paszta
Organization Member: Timothy W. Kreke

STATEMENT OF CLAIM

- 1- The Agreement was violated when the Carrier failed to assign Nashville Division employee Mr. R. Daniel to operate a Gradall within the Nashville Division between Memphis, Tennessee and Nashville, Tennessee beginning May 4, 2010 and continuing, and instead assigned Atlanta Division employee E. Moore. (System File 158752610/2010-069313)
- 2- The claim referenced in Part (1) above, as appealed by Vice Chairman A. H. Shelton on September 20, 2010 to Director Employee Relations N. V. Nihoul shall be allowed as presented because said claim was not disallowed by Director of Employee Relations N.V. Nihoul in accordance with Rule 24(b).
- 3- As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant R. Daniel shall now be compensated ‘... for the total hours including overtime, made by Mr. Bagwell beginning on May 4, 2010 and continuing [until] the violation stops, at the respective straight and overtime (Machine Operator) rate of pay.

FINDINGS

Upon the whole record and on the evidence, the Board finds that the parties herein are Carrier and Employer within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The Organization contends the Carrier was obligated to fill and/or assign the position to the senior qualified available employee retaining "A" Machine Operator seniority within the Nashville Division on the Former L&N Seniority District instead of the Atlanta Division employee from May 4, 2010 and continuing. The Organization cites Rule 24(b), specifically, "When a claim or grievance is not allowed, the carrier's highest designated labor relations officer will so notify, in writing, whoever listed the claim or grievance (employee or his union representative within sixty (60) days after the date the claim or grievance was discussed of the reason therefor. When not so notified, the claim will be allowed."

On the merits of the claim, the Organization points to Rules 1, 3, 4, and 11. The Carrier initially denied the claim describing it as "a very confusing claim that lacks enough detail to progress." It also asserted that at the time of the October 26, 2010 conference "the Carrier stated it was going to deny the claim on its merits." In a letter dated December 15, 2010, N. V. Nihoul, Director, denied the claim asserting the work was "performed on an emergency basis." The letter also reiterates the

argument that the claim “continues to contain confusing information regarding who the claim is against.” The original claim was not corrected or revised.

On February 9, 2011, the Organization wrote to Mr. Nihoul claiming it had “not received a post conference letter from the Carrier.”

It must be noted that the parties do not customarily use certified mail or other proof of mailing when they exchange claims and responses. Items mailed in the normal course of business are generally presumed to have been received. Although the Organization asserts that the denial letter is new evidence, nothing in the record identifies the December 15 letter as a new document.

As to the original defense, a majority of the Board agrees that the initial claim letter is confusing in that it seeks hours made by Mr. Bagwell in the first paragraph and refers to a machine operated by Mr. Moore in the second paragraph. The appeal to Director of Labor Relations Nihoul carries the error forward and again provides no further detail.

In Award No. 28922 (Docket No. MW-28872) the Board agreed that “it is only reasonable that the Organization be required to specify which particular employees were adversely affected and under what circumstances.” It also concluded “the Carrier’s later failure to respond to the appeal is without significance, in view of the Claim’s initial deficiency.”

In Award No. 16675, Docket No. SG-17018, a Board found the claim as presented was “vague and indefinite failing to give essential facts such as a descriptive nature of the work involved, definite dates and hours of work performed on each such day. The claim in effect would require the Carrier to examine its records to determine ...” what work was done by whom and when. “The burden is on Petitioner to present facts sufficiently specific to constitute a valid claim.”

The claim is denied for failure of proof.

AWARD

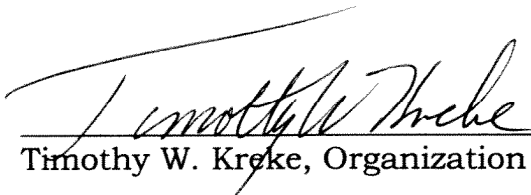
Claim denied.

A handwritten signature in cursive script, appearing to read "Barbara Zausner", written in black ink on a light-colored background.

Barbara Zausner, Neutral Board Member
January 11, 2012

A handwritten signature in cursive script, appearing to read "R. A. Paszta", written in black ink on a light-colored background.

Robert A. Paszta, Carrier Member

A handwritten signature in cursive script, appearing to read "Timothy W. Kroke", written in black ink on a light-colored background.

Timothy W. Kroke, Organization Member