

The First Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

PARTIES TO DISPUTE: (United Transportation Union  
(Conductors', Trainmen and Engineer's Committees  
(The Atchison, Topeka and Santa Fe Railway Company  
(Eastern Lines (Excluding Northern and Southern  
Divisions)

STATEMENT OF CLAIM:

"1. May the Carrier unilaterally institute Interdivisional Freight Service on the various Subdivisions of the Illinois Division by bulletining assigned freight service to run through home terminals?

2. If the answer to the foregoing Question is in the affirmative, then would the Home District Crew(s) be paid as provided in Article 15(j-2) of the Conductors' and Brakemen's Eastern Lines Schedule?"

FINDINGS:

The First Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employes 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 Carrier served notice May 22, 1986, to establish Interdivisional service on the First and Second Subdivisions of the Illinois Division, running through the home terminal of Chillicothe, Illinois and Third and Fourth Subdivision of the Illinois Division, running through the home terminal of Marceline, Missouri under the provisions of Article IX of the October 31, 1985 UTU National Agreement. When no agreement was reached after several months of negotiations, the Carrier withdrew its notice in a letter dated May 21, 1987.

In bulletins issued May 27, 1987, the Carrier established assigned freight service between Corwith, Illinois and Fort Madison, Iowa and between Fort Madison, Iowa and Argentine, Kansas. The service was to start as of June 2, 1987. On May 28, 1987, the UTU General Chairperson telephoned the

Carrier's highest officer of appeal about the matter. Also on May 28, 1987, the Organization sent a copy of its Ex Parte Submission to the Carrier. The Organization's Ex Parte Submission to this Board was received by the First Division on the following day, May 29, 1987.

"Circular No. 1 (issued October 10, 1934) of the National Railroad Adjustment Board, Organization and Certain Rules of Procedure" states, in part, under "Form of Submission":

"Position of Employees: Under this caption the employees must clearly and briefly set forth all relevant, argumentative facts, including all documentary evidence submitted in exhibit form, quoting the agreement or rules involved, if any; and all data submitted in support of employees' position must affirmatively show the same to have been presented to the carrier and made a part of the particular question in dispute." (emphasis added.)

It is axiomatic that the data in support of the Employees' position must have been presented to the Carrier in the handling on the property in order for this Board to consider such. If an Organization desires to show that it did conference a dispute, the Organization would attach as part of its Submission to this Board a copy of a letter it sent to Carrier confirming the fact that a conference was held on the property or a letter from the Carrier referring to the fact that a conference was held on the property. In the instant case, the Organization did not submit as part of its Submission to the Board any correspondence whatsoever substantiating handling on the property. In its Reply, the Organization does submit as its Exhibit 2 a statement in the form of the handwritten notes of the Organization on the "5-28-86" phone conversation between the General Chairman and the Carrier Assistant to the Vice President--Labor Relations. Since this statement was not shown to have been furnished to the Carrier on the property, it is not properly before this Board and cannot be considered by this Board. The Organization submits as an essential part of its case, certain letters which it contends show a forty-seven year past practice in support of its position. No showing exists that the letters were submitted to the Carrier in the handling on the property and as such they cannot be considered by the Board.

This Board is an appellate tribunal, which resolves "minor disputes" when the parties are unable to resolve those disputes themselves, after due consideration and handling in the usual manner on the property by the parties. A reason for requiring that all data submitted to the Board be presented to the other party in the handling on the property prior to submitting the matter to the Board is to ensure that the parties have had the opportunity to fully

review and understand each other's position prior to undertaking the time and expense of arbitration. This full disclosure should, in many cases, result in the adjustment of the dispute by the parties themselves based on a full understanding of the facts of the dispute and the application of the pertinent Agreement language and established decisional precedents.

As set forth above, this Board cannot consider data which was not presented to the other party on the property. Were this Board to consider the merits of this case, with all data not handled on the property not being considered by the Board, neither side's case would be fully heard. In the instant case, we cannot get to the merits because the data properly before this Board does not show that the dispute was handled "in the usual manner" on the property as required by Section 3 First (i) of the Railway Labor Act. For this reason, the Claim must be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of First Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of July 1988.