

The First Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (United Transportation Union
(Grand Trunk Western Railroad Company

STATEMENT OF CLAIM:

"DTSL Sub-division claim of Conductor Tovatt and Trainmen J. Swinehart and P. Ruetz for one (1) hour, thirty-five (35) minutes MOCS. More than One Class of Service from 0315 hours to 0450 hours, at the DT&I's Flat Rock Yard account required to pick-up train 421 at Flat Rock Yard (DT&I) Flat Rock, Michigan. Docket No. 415 Claim 220."

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 employes 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 Crew involved in this Claim went on duty at Lang Yard, Toledo, Ohio, at 0130 on September 6, 1989. The train that they were called to operate was to be boarded at Flat Rock, Michigan, a location approximately 25 miles away from their on duty point. The Crew was deadheaded by Taxi from Lang to Flat Rock where they arrived at 0315 and departed at 0450. In a time slip prepared on for the trip, Claimants requested, inter alia, one hour and thirty-five minutes MOCS (More than One Class of Service) pay for service between 0315 and 0450 account required to pick up train 421 at Flat Rock Yard. (The exact language used on the time slip reads: "MOCS A/C P/u 83 cars AT Flat Rock yd.") The MOCS portion of the time slip was not allowed.

Following disallowance of a time slip (or an item contained therein) the parties Revised Time Limit Rule provides that an appeal may be made by using "a copy of the timeslip ... together with a cover letter attached."

On October 24, 1989, the time slip was appealed along with 373 other claims. Neither party has supplied this Board with a copy of the cover letter transmitting the appeal. The September 6, 1989 time slip and the other 373 claims were all included in a single docket (No. 415) and were discussed in conference on December 19, 1989. On February 7, 1990, Carrier wrote the General Chairman, again denying the September 6, 1989 time slip, stating:

"The remainder of the claims in this Docket, which have not previously been mentioned in our Letters 1 thru 6, of any outstanding issues in those claims mentioned, are without basis as you have failed to sustain the burden of proof, provide rule support or establish the merit of the claims. In each instance, the time slip was the only documentation presented by the Organization and no additional information was provided in conference. In the absence of anything other than a mere assertion of an entitlement on the time slips, the Organization has failed to affirmatively establish the legitimacy of the claims. For these reasons, the claims are denied. Those issues which have already been discussed in this docket or in previous dockets are also denied for the reasons stated in our denial letters, which are by reference incorporated herein.

In the event that you are not in accord with the above stated determination that the claims are baseless, it is requested that you promptly advise, setting forth your position, the rule or agreement, and any other material supportive of your position."

(Underscoring added)

There is no record of any further discussions on this matter, or exchanges of correspondence on this particular time slip. The Organization timely docketed the Claim with this Board.

In its Submission to this Board, the Organization, while presenting exhaustive and detailed argument and citation of other Awards and local settlements, contends that because Carrier did not do anything but deny the time slip without comment it was now barred from offering anything in defense of the denial, because to do so would be to raise new matters that were not handled on the property as required by the Railway Labor Act and Circular No. 1 of this Board. Carrier, also citing Circular 1 and the Act, contends that neither facts nor argument were supplied by the Organization while the matter was under review on the property, thus they cannot be developed before the Board for the first time. Carrier also pleaded that it is at a disadvantage because this lack of proper handling leaves it in the dark as to how to defend its position before the Board. As the Organization did, Carrier too, presented exhaustive and detailed argument in support of a dismissal or denial award.

Carrier's February 7, 1990 denial unequivocally stated that "no additional information was provided [in support of the claim] in conference." The denial also placed the Organization on notice that in the event it was not in accord with Carrier's assertion that the claims were baseless it should promptly advise, setting forth its position, the Rule or Agreement violated and material supportive of its position. The record before this Board contains no information supporting a finding that this was attempted, in any fashion.

However, in its Submission, the Organization stresses that such matters were presented and discussed in conference. It complains that Carrier is attempting to mislead the Board into believing that nothing is discussed in claim conferences, stating further that "rule support is right on the time slip and is developed at the conference as was done here." This may be true, but that does not aid the Board in making its determinations here. This Board is an appellate tribunal. We do not hear cases de novo where an opportunity is present to sift evidence. Our Rules and the Act under which we operate require that more than perfunctory handling be given claims while they are being handled on the property. An obligation is placed on the parties to attempt to settle their differences without resort to appeal off the property. Matters come to us on the basis of the parties written record. This written record is to include all documents exchanged while the matter was being considered on the property. When one party argues that a matter was discussed and the other argues that it was not, if there is no written record or other confirming evidence, the Board is at a disadvantage in deciding which argument is correct.


Notwithstanding what is written in the Submissions of the parties, the only documents which we have which were exchanged on the property are the timeslip and the February 7, 1990 denial. The February 7, 1990 denial states that no additional information was provided in conference. If this statement was not correct then the time to challenge it was when it was made. In fact Carrier's letter solicited a challenge and there is no record that it was done. This leaves the Board with no alternative but to dismiss the Claim.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Attest:


Nancy J. Devan - Executive Secretary

Dated at Chicago, Illinois, this 24th day of March 1992.