

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISIONAward No. 24142
Docket No. 43738
92-1-90-1-G-1659

The First Division consisted of the regular members and in addition Referee William E. Fredenberger, Jr. when award was rendered.

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

STATEMENT OF CLAIM:

"DTSL Sub-division claims of Conductor Fred Bellamy and Trainmen Richard Lockwood and Barbara #2 for eight (8) hours account not called in Puller Service to deliver 164 empties to the CSX at Walbridge Yard. CSX-T road crew delivered 164 car train, consisting of 105 empty Deex hoppers and 59 system hoppers, with Engines 2560-6562 departing Lang Yard at 0615 hours. Docket No. 411 Claim 389. Also Docket 411 Claims 396, 399 and 407."

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 Carrier operates Lang Yard in the Toledo, Ohio terminal. The CSX Transportation Company (CSX) operates the Walbridge Yard on the south side of the terminal. The Claims in this case were filed February 10, 18, 20 and 27, 1989, when CSX road crews picked up CSX road trains from the Lang Yard and proceeded through Walbridge Yard without stopping to points beyond the Toledo Terminal. The Claims were stated to be based on the theory that the Carrier should have called Claimants in puller service to deliver the CSX road trains to that carrier at the Walbridge Yard.

The Carrier denied the Claims. The Organization appealed the denial to the highest officer of the Carrier designated to handle such disputes. However, the dispute remains unresolved, and it is before this Board for final and binding determination.

At the outset, the Carrier raises the procedural objection that the Organization has violated Circular No. 1 of this Board inasmuch as no Rule has been cited in support of the Claims and the record does not affirmatively demonstrate that the Organization advanced the arguments set forth in its Submission to the Board during the on-property handling of the case. Our review of the record leads us to conclude that the Carrier's point is well taken.

Until August 8, 1990, the Organization furnished nothing more in support of the Claims than the statements of the Claims on the four timeslips filed for each of the Claim dates. Each of the timeslips makes some statement as to the makeup of the disputed trains. Three of the slips simply say that Claimant should have been called to deliver the trains to CSXT. Two timeslips state that Claimant should have been called in puller service. The other two timeslips simply state that Claimant should have been called to deliver trains to CSX. Only one timeslip states that the trains should have been delivered to CSX in the Walbridge Yard.

By letter of August 15, 1989, the Carrier denied the Claims stating in pertinent part that if the Organization did not agree with the denial ". . . it is requested that you promptly advise, setting forth your position, the rule or agreement, and any other material supportive of your position." The record does not substantiate that any thing which might arguably be characterized as a response to the Carrier's August 15, 1989 denial came until August 8, 1990, in a letter by the Organization to a Carrier Trainmaster with a copy to the Carrier's highest officer which detailed the Organization's position and arguments and support therefor with respect to what appears to be a dispute which is substantially the same as the one involved in the instant case. However, as the Carrier correctly points out, that letter was written in connection with claims different from those involved in the instant case, and it came just two days before the Organization invoked the jurisdiction of the Board to adjudicate the Claims in this case. Assuming, arguendo, that the August 8, 1990 letter was a response to the Carrier's August 15, 1989 denial of the Claims in this case, it came too late to be reasonably considered part of the on-property handling of the Claims in this case. Accordingly, Circular No. 1 of this Board precludes us from considering that letter.

We believe the record before us is analogous to the one confronted by the Board in First Division Award 24133, involving the same parties. In that case, the record contained nothing to substantiate the claim except the statement on the timeslip. Finding such statement inadequate to substantiate the claim, it was dismissed. There, as here, the Organization argued that the claim was substantiated orally in conference. However, the Board determined that in the absence of written documentation establishing what had been discussed in conference the Board as an appellate body, could not resolve the

issue and thus could not find that the claim had been substantiated. The Board noted in particular that the Organization did not respond to the Carrier's denial by the highest officer although that denial invited a substantive response to the Carrier's determination that the claim was without support. There is a clear analogy to the manner in which the Organization handled the Claims in this case.

The Board is left with a record consisting of the statements of the Claims on the timeslips and the Carrier's denial thereof. Our review of those documents leads us to conclude that nothing therein supports the Claims in this case. The Organization's arguments, including citations to Rules, in support of the Claims are not affirmatively shown by the record in this case to have been handled on the property. Accordingly, they are barred by Circular No. 1 of this Board. Moreover, the record in this case 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, 45 U.S.C. § 153 First (i). It follows that the Claims must be dismissed. See First Division Award 23883.

A W A R D

Claims dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of May 1992.