

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

PARTIES TO DISPUTE:

(
(CSX Transportation, Inc. (L&N)

STATEMENT OF CLAIM:

1. (a) That the CSX Transportation, Inc. (former L&N Railroad) hereinafter referred to as the Carrier, improperly and arbitrarily furloughed Carman O. V. Proffitt, hereinafter referred to as the Claimant, on January 17, 1986, and assigned the carman's work which had previously and historically been performed by him at Copperhill, Tennessee, to other than carmen, in violation of Rules 104 and 30.

(b) That the Carrier violated Article V, Paragraph (a) of Appendix D when Director of Labor Relations Williams failed to respond to the General Chairman's appeal dated April 11, 1986 within sixty (60) days.

2. That accordingly, the Carrier be ordered to compensate claimant in the amount of eight (8) hours pay per day and five days per week, Monday through Friday, commencing on January 20, 1986 and continuing until he is recalled to service.

FINDINGS:

The Second 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.

As Third Party in Interest, the United Transportation Union and Transportation Communications Union were advised of the pendency of this dispute and did not file a Submission with the Division.

The Carrier furloughed the only Carman stationed at Copperhill, Tennessee on January 17, 1986 giving rise to the instant dispute. The Organization filed two Claims with respect to that event. During the progression of the simultaneous Claims the Organization asserted Carrier violation of the time limits of the Agreement.

The Claim hereinbefore this Board was filed by letter dated February 21, 1986. The on-property correspondence indicates that the initial Claim emphasized and referenced the September 25, 1964 National Agreement. The February 21, 1986 Letter began as follows:

"On January 17, 1986 the last and only Carmen's position...was abolished and that point was abandoned as far as Carman's work is concerned.

No notice as required by Section 4 of Appendix B of the controlling Agreement and Section 4 of the September 25, 1964 National Agreement which reads as follows in pertinent part; was served."

That letter quoted Section 4 of the 1964 National Agreement and then went on to mention two local Agreement Rules.

Carrier's declination of April 3, 1986 referred to Article V of the 1964 National Agreement. While it denied violation of local Agreement Rules, it further stated that entitlements for any alleged violation, were due under Article I of the 1964 Agreement.

By letter of April 7, 1986, the Carrier was notified that further appeal would be forthcoming. The Organization appealed the Claim on April 11, 1986 referencing Rules 30 (a) and 104 of the Agreement, but again focusing upon the 1964 National Agreement. That letter clearly identified the Claim and all previous correspondence. It further stated that:

"The Carrier has not shown any evidence or documentation that business has declined to the extent that a Carmen is no longer needed there, surely there has been a change in operations or the work has been transferred to another point, and Copperhill has been abandoned as far as Carmen are concerned." (emphasis added)

The Organization argues that the Claim was not answered by the Carrier. It requests that the grievance be allowed as presented due to violation of the time limits of the Agreement.

In its Ex Parte the Carrier argues that it did respond to the Claim by letter of April 16, 1986. The Carrier argues further that this Board lacks jurisdiction as the issues raised by the Organization properly belongs before Special Board of Adjustment No. 570. The Carrier also argues that the Claim is duplicative as the same issue is before Special Board of Adjustment No. 570.

Jurisdictional issues may be raised at any time. The Board finds that the Organization mixed both national Agreement and local Agreement issues. Our reading is that the Claim filed with the Carrier was based upon business decline, change of operations, work transfer and abandonment of Copperhill. All such issues make this Claim a dispute exclusively subject to Article I of the September 25, 1964 National Agreement. Following that Agreement such disputes are properly adjudicated by Special Board of Adjustment No. 570 and not before the Second Division. This Board has no jurisdiction over disputes involving the 1964 National Agreement and this dispute has simultaneously been presented to Special Board of Adjustment No. 570.

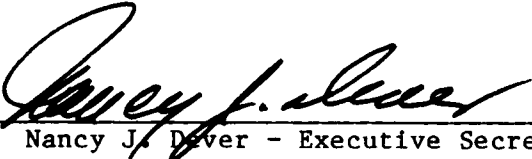
Given our lack of jurisdiction, the Claim must be dismissed without consideration of time limits or regard to merits. This is consistent with past Awards which considered jurisdictional issues and duplicative Claims (Second Division Awards 11394, 9321; Third Division Awards 27103, 26953).

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 12th day of April 1989.