

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **21441**
Docket Number **MW-21186**

James C. **McBrearty**, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(Louisville and Nashville Railroad Company

STATEMENT OF CLAIM: **Claim** of the System **Committee** of the Brotherhood that:

(1) The Agreement was violated when Truck Driver John W. Payne was not called and used to drive the truck used by Assistant **Roadmaster** M.B. Rossell to patrol track on **Saturday**, March 9, 1974, Sunday, **March** 24, 1974 and Saturday, April 20, 1974 **[System File 1-12(35)/E-304-18/]**.

(2) Truck Driver John W. **Payne** now be allowed twelve (12) hours of pay at his time and one-half rate.

OPINION OF BOARD: After a careful review of the record in the instant case, the Board finds that the only rules cited and relied upon by the Petitioner in the on-property handling were 2(c), 30 **(b)** and 30 **(f)**. However, in its submission to the Board, Petitioner has cited Rule 1 (Scope), all of Rule 2, **Rule** 8 (a), Rule 30 (b) (f) and **(g)**, Rule 5 (a), and Rule **26 (b)** and **(c)**.

On these facts there can be no doubt that the **claim** as presented to the Board is not the same claim that was handled on the property and, consequently, there is no proper claim before the Board for its consideration. The **Employees** have the responsibility and burden to cite the rules and agreement language relied upon during handling on the property. This, of course, is a fundamental due process right of the other party, and where the rules are not cited, discussed, or in some way stated on the property, the omitted rules cannot be supplied for the first time in the submission of claim to this Board. It is the intent of the Railway Labor Act that issues in a dispute **before** this Board, shall have been framed by the parties in conference on the property.

This fundamental principle cannot be evaded by Petitioner using the scatter-gun approach on the property "or any other applicable rules of the October 1, 1973 Agreement." The "applicable rules" **must** be clearly identified.

Therefore, the Board **must** disregard Petitioner's reference to Rules **1, 2(a), (b), (d) and (e), 8 (a), 30 (g), 5 (a), and 26 (b) and (c)**.

Concerning Rules 2 **(c)**, and 30 (b) and **(f)**, the Board finds these rules simply do not support Petitioner's claim; and, accordingly, we must issue a dismissal award.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, **finds and holds:**

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved **June 21, 1934;**

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Parker
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1977.

