

MARKS
3rd Div.
11-9-93 Adopt

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29909
Docket No. CL-29712
93-3-91-3-64

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

PARTIES TO DISPUTE: (Transportation Communications International Union)
(CSX Transportation, Inc. (former Seaboard Coastline Railroad Company))

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10537) that:

1. Carrier violated the Agreement, along with Public Law Board No. 2470, Award No. 148, when it failed to comply with decision rendered in said award.
2. Because of the above violation, Carrier shall now compensate the Senior Available Clerk, Guaranteed Extra Board, in preference, one (1) days' pay at the applicable rate, to begin on February 11, and shall continue on a daily basis until claim is settled, Law Board Award is complied with, and work returned to the clerical craft as stated in Public Law Board Award."

FINDINGS:

The Third 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 employe 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 waived right of appearance at hearing thereon.

A threshold issue to be decided in this matter is whether the Board has jurisdiction over the subject matter of the Statement of Claim. Item 1 of the Statement of Claim alleges that Carrier

violated the parties' Agreement when it failed to comply with an Award of Public Law Board No. 2470. Carrier maintains, inter alia, that it did comply with Award 148, PLB 2470, but, further the Board lacks jurisdiction to consider this issue because Paragraph (p) of Section 153 of the Railway Labor Act makes it clear that any failure to comply with an Award of the Board is to be resolved through petition to the United States District Court.

Paragraph (p) reads in pertinent part:

"If a carrier does not comply with an order of a division of Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States...a petition setting forth briefly the causes for which he claims relief...."

With this the Board agrees. Clearly, it is not within our scope of authority to enforce Awards. Congress delegated this responsibility to the Courts. If the Organization harbored the notion that Award 148, PLB 2470 was not being complied with, appropriate recourse was open to it to pursue the failure to comply through court action.

The Organization contends though, that Carrier did not raise the defense that the Board lacked jurisdiction over the issue in the Statement of Claim until after the matter had been docketed with this Division. Thus, it is new argument which, under our Rules, cannot be considered. This Board has long subscribed to the premise that matters that have not been dealt with on the property cannot be advanced for the first time before the Board. However, an exception to this general proposition is in place. And that exception concerns challenges to jurisdiction. Jurisdictional challenges, as opposed to procedural challenges, may be raised at any time. A failure to raise jurisdictional challenges on the property does not foreclose their consideration after the matter is placed before the Board. In this regard see Third Division Award 27575, wherein the Board stated:

"The Organization's contention that the jurisdictional issue cannot be considered because it is new argument raised for the first time before this Board is not well-founded. This Board has over the years held that jurisdictional issues can be raised at any time. See Third Division Awards 8886, 9189, 10956, 16786, 19527, 20165 and 20832."

Accordingly, the Claim must be dismissed for lack of jurisdiction.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: *Catherine Loughrin*
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 9th day of November 1993.