

RECEIVEDNATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

JAN - 5 1995

Award No. 30615
Docket No. CL-30026
94-3-91-3-443

G. L. HART

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood (GL-10618) that:

1. Carrier violated the Mobile Agent Agreement when they rearranged the duties of the Base Agent (Position No. 141) to relieve the Data Processing Clerk on Saturday of each week effective March 17, 1990.
2. As a result of the above violation, Carrier shall compensate the Senior Available Clerk eight (8) hours at time and one-half effective March 17, 1990 and each Saturday until claim is settled."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

This dispute arose at Spartanburg, South Carolina, where Carrier maintains both a monthly-rated Base Agent and Mobile Agent. The Mobile Agent position is a six day a week, Monday through Saturday schedule.

Prior to March 16, 1990, Data Processing Position No. 142 at Spartanburg worked 8:00 A.M. to 4:00 P.M. Wednesday through Sunday. The incumbent of Position No. 142 was relieved on his customary rest days, Monday and Tuesday, by a "regular" relief assignment. Effective March 16, 1990, Position No. 142's rest days were changed to Saturday and Sunday. On Saturday, the position was relieved by the six-day Mobile Agent, and on Sunday by the regular relief position.

On March 24, 1990, the Organization filed a continuing claim on behalf of the "Senior Available Clerk" alleging Carrier "violated the Mobile Agent Agreement when it required Base Agent Taylor to assume all duties of DPC Position 142 on Saturday each week." The Organization sought compensation on behalf of the senior available clerk at time and one-half on Saturday of each week "until the claim is settled."

In handling on the property, Carrier denied the merits of the claim stating: "The SCL Mobile Agent's Agreement allows for the work formally performed by the DPC to be handled by the Base Agent on Saturdays without violation of same." Further correspondence between the Parties was to no avail, and the dispute was progressed to the Board for resolution. In its Submission to the Board, the Carrier asserted lack of jurisdiction by the Board over this claim.

Carrier's primary argument in its Submission to the Board is that: "The claim at hand should be dismissed for procedural reasons since it is not before the proper forum for adjudication and the Board should dismiss it due to lack of jurisdiction." Carrier premised its assertion on Addendum 8 of the Mobile Agent Agreement which states:

"(b) In the event any dispute or controversy arises between the Carrier and the Organization with respect to the interpretation or application of any provision of this Agreement, including an unresolved dispute under Section V, Paragraph (a), which cannot be settled by the Carrier and the Organization within thirty (30) days after the dispute arises, such dispute may be referred by either party to an Arbitration Committee for consideration and determination. Upon notice in writing served by one party to the other of intent by that party to refer the dispute or controversy to an Arbitration Committee, such party shall, within ten (10) days, select one member of the Arbitration Committee and the two members thus chosen shall endeavor to select a third member who shall serve as chairman, in which the compensation and expenses of the Chairman shall be borne equally by the parties to the proceedings. All other expenses shall be borne by the party incurring them.

Should the two members be unable to agree upon the appointment of a third member within 10 days, either party may request the National Mediation Board to appoint the third member, whose compensation and expenses shall be paid in accordance with existing law. The decision of the majority of the Arbitration Committee shall be final and binding."

The Organization did not refute the Carrier's argument that jurisdiction over this dispute is vested in the Arbitration Committee, but protested that this belated jurisdictional argument could not be considered by this Board because it had not been joined in handling on the property. Certainly it is better practice to raise and discuss fully in grievance handling all evidence and arguments available to a Party. Under Circular No. 1, Parties are prohibited from raising and this Board is bound not to consider evidence withheld from handling on the property. Thus, the Board generally will reject any proffer of de novo evidence in submissions. It is equally well established, however, that a motion to dismiss for lack of subject matter jurisdiction may be raised by a party at any time short of a final decision. Third Division Awards 19527, 28838. If such a motion is well grounded it must be granted, for the Board has no authority to determine a dispute over which it lacks jurisdiction. See Third Division Awards 27100, 26953 and 26006.

AWARD

Claim dismissed.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 28th day of December 1994.