

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISIONAward No. 4867
Docket No. 4840
92-4-91-4-15

The Fourth Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

(United Transportation Union -
(Yardmasters Department

PARTIES TO DISPUTE:

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(Chicago and North Western
(Transportation Company

STATEMENT OF CLAIM:

Claim and request that Yardmaster R. W. Olson be allowed one day's pay at the yardmaster rate of pay for dates of April 10 and 11, 1990 account being required by Carrier to assist train crews of Trains BRC 601-603 and BRC 634-531 while yarding their trains on the claim dates.

FINDINGS:

The Fourth 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.

This dispute stems from claims which were originated by the Claimant on April 10 and 11, 1990. These claims were progressed in the usual manner through the grievance procedures and were denied on the merits. At the highest appeals level, the Organization listed the claim under date of June 16, 1990. Carrier asserts that the claims were denied on their merits by letter dated August 9, 1990. Organization argued, by letter dated September 24, 1990, that the August 9, 1990 denial letter had not been timely received by it. Carrier responded by letter dated October 17, 1990, that the denial had been issued and dispatched on August 9, 1990, and stated that "a copy of my response is attached hereto." Conference was requested by the Organization by letter dated October 20, 1990, which included the assertion that "I didn't receive a copy of your response and a copy of this was not attached to your letter of October 17, 1990 as stated in your letter." On November 27, 1990, Carrier replied to the conference which had been held on November 9, 1990, and

stated, in pertinent part, that "I stated in conference that we had indeed answered your appeal with our letter dated August 9, 1990, a copy of which was sent to you on October 25, 1990."

The next correspondence of record in this case is a letter dated January 22, 1991, from the Carrier in which its denial of the claim is reaffirmed with no mention of the alleged time limit violation. Subsequently, by letter dated March 3, 1991, the Organization indicated to the Carrier that it was progressing this dispute to its Assistant to President "for further handling." Again in the March 3 letter the alleged time limit violation was referenced. Carrier replied to this March 3 communication on March 26, 1991, and again restated its version of the time limit allegation and again reaffirmed its denial of the dispute.

Eventually, by letter dated April 10, 1991, the Organization presented to this Board the subject which is outlined in the Statement of Claim, supra. As can be seen therein, no reference is made to an alleged time limit violation.

Before this Board, the sole issue which was argued was the alleged time limit violation. We are not, therefore, faced with a consideration of the merits, or lack thereof.

The Carrier argued that inasmuch as no reference is made to an alleged time limit violation in the Statement of Claim to this Board, we are precluded from considering this dispute as it has been argued to this Board.

The Organization, on the other hand, argued that the time limit allegation was perfected and progressed during the on-property handling of this dispute and is properly before this Board for consideration.

We have reviewed the several precedential Awards which each of the parties have presented in support of their respective positions. It is apparent that on this issue there is a divergence of opinion as to whether or not the Statement of Claim to this Board must contain a specific reference to an alleged time limit violation when that allegation was as here, clearly a part of the on-property handling of the dispute.

Under the provisions of the Railway Labor Act and the Rules of Procedure of this Board, the party presenting a dispute "must clearly state the particular question upon which an award is desired." When that is not done in the Statement of Claim as presented to this Board, we would be exceeding our jurisdiction by considering arguments which go beyond that Statement of Claim.


Support for this conclusion is found in Award 28529 of the Third Division of this Board which is the most recent, and in our opinion the most logical, opinion on this subject. We, therefore, dismiss this claim for lack of jurisdiction without reaching the issue of timely or untimely denial of the original claim.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

Attest:



Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of November 1992.