

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 24917
Docket No. 44479
98-1-95-1-G-1682

The First Division consisted of the regular members and in addition Referee Robert E. Peterson when award was rendered.

(United Transportation Union
PARTIES TO DISPUTE: (
(Grand Trunk Western Railroad Incorporated

STATEMENT OF CLAIM:

“DTSL Sub-division claim of Conductor Miller Trainmen Hughes and Palmer for eight (8) hours account required to service improperly serviced caboose, 7/15/94, reported on 7/13/95, no drinking water, wash water or fusees. Docket 453 Claim 312.”

FINDINGS:

The First 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 were given due notice of hearing thereon.

The Claimants were the crew members on Train CW53 on July 15, 1994, and went on duty at Lang Yard at 0030 hours. They picked up 73 cars at Lang Yard and took them northward to Whiting, where the cars were spotted at a plant. The crew then pulled 103 empty cars from the plant and returned to Lang Yard, where they went off duty. Their total time on duty was six hours and 55 minutes. Following such tour of

duty, Claimant Conductor Miller submitted a claim for himself and his two crew members that reads as follows:

"Allow 8 hr's - caboose not properly equipped. I turned in this cab on 7/13/94 - 22:30 - No water - no wash water - no fusees. Called 7-15-94 cab still not serviced - I had to service it myself."

There is no question that during the handling of the claim on the property that aside from the above language of the claim as submitted, the only other thing that the Organization said about the claim was that it is "for an improperly serviced caboose." It was not until the filing of its ex parte Submission to this Board that the Organization makes the contention that the claim is supported under the provisions of Article 70, Caboose, paragraph (b), and application of such Article 70 as set forth in certain parts of an Agreement of September 1, 1983, which Agreement is identified as "Agreement 'L'" on the property.

The Carrier denied the claim on the property on the basis that the claim itself did not provide sufficient information to support any payment whatever, let alone a payment of eight hours' pay for each of the three crew members or Claimants. It is also noteworthy that despite the Carrier in its initial denial of the claim and during the appeals procedure having requested that the Organization set forth "the rule or agreement, and any other material" supportive of its position, that this information was not thereafter given to the Carrier.

Prior Awards of this Board have held almost without exception that the burden of proof rests with those presenting a claim to establish the material aspects of a claim or something more than just the remedy being sought while the claim is being handled on the property. Here, as stated above, the record is devoid of any probative evidence that those rules which the Organization now relies upon were in fact cited and brought forward on the property in a manner so as to have afforded the Carrier the opportunity to properly defend against the claim.

The importance of the parties establishing a full and complete record on the property is evident from argument that the Carrier makes to the Board in response to the Organization having now cited Agreement "L" in support of the claim. The Carrier submits that even if it was to be assumed, *arguendo*, that the caboose was found to not be properly equipped, that Agreement "L" prescribes that it is a responsibility of a

Conductor to "report to proper authority any complaint as to an improperly equipped and/or supplied caboose in order to permit Carrier to take corrective action." This, so that "correction may be effected" or the Carrier "supply a suitable substitute." And, as concerns "an employee" who is required by order of proper authority to add supplies to a caboose that such employee "will be allowed a one (1) hour arbitrary at straight time rate of service in which employed." Thus, as the Carrier submits it is evident that absent sufficient information showing who, if anybody, was contacted it was denied the opportunity to have taken such corrective or other action as it might have determined appropriate or, in the alternative, have directed the crew work without a caboose under Article VIII of the October 31, 1985 UTU National Agreement.

Under the circumstances, it being evident that the Organization failed to meet its burden of proof during the handling of the claim on the property, or to follow the Rules of Procedure as set out in Circular No. 1 of this Board, the claim will be denied.

AWARD

Claim denied.

ORDER

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 First Division

Dated at Chicago, Illinois, this 30th day of June 1998.