

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36364
Docket No. SG-36029
03-3-00-3-145

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

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad (C&NW):

Claim on behalf of D. J. Zimmerman for payment of five hours at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly Rules 15 and 16, when on October 10, 1998, it failed to call the proper employee to repair signal problems at M.P. 68.8, track 1, and instead called a junior employee to perform the work and denied the Claimant of the opportunity to perform this work. Carrier's File No. 1165533. General Chairman's File No. 8c159659.1. BRS File Case No. 11252-C&NW."

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 were given due notice of hearing thereon.

The claim as set forth in the Statement of Claim, supra, clearly identifies the Claimant, the date of the alleged violation, the nature of the basis for the claim and the remedy sought for the alleged violation. This claim was timely originated on the property by the Organization and was fully explored and discussed by the parties during all of the on-property handling of the dispute. Failing to reach a resolution satisfactory to the Organization, the claim was listed for handling by the Board. Both parties received proper notification from the Board relative to the pendency of the clearly identified dispute. Both parties submitted Submissions to the Board in which they set forth their respective evidence, arguments, exhibits, etc., in support of their individual positions.

The initial problem in this case lies in the fact that while the Organization's Submission addressed the issues, contentions and conclusions directly related to the Statement of Claim as listed with the Board, the Carrier's Submission argued a completely different set of circumstances. NONE of the Carrier's Submission addressed any of the issues, contentions, positions or evidence that was involved in the on-property handling of the instant claim.

During the Board's hearing on this case, we were directed to the decisions rendered in First Division Awards 23816 and 23856, as well as Third Division Award 29053 which purportedly had bearing on the instant situation.

In First Division Awards 23816 and 23856, the Carrier failed to submit a Submission to the Board. In Third Division Award 29053, the Carrier filed an Submission, but failed to sign it. In those three cases, the Board, in its wisdom, concluded that there was sufficient relevant material before the Board to permit it to render merits Awards.

Without in any way questioning the legitimacy of the reasoning in these three Awards, the Board would simply note that in this case the Carrier did, in fact, file a timely Submission. It properly signed its Submission. In its Submission it presented evidence, correspondence and arguments all in relation to a totally different claim.

Each party to a dispute before the Board has a responsibility to support their respective positions with adequate relevant evidence and argument. Inasmuch as, in this case, the evidence and argument of the Organization stands unchallenged and uncontroverted, we have no recourse but to sustain the claim as presented.

These same parties were involved in a strikingly similar situation in Third Division Award 35580. As we said in that Award, this decision is based solely on the procedural defect that exists in this particular case and has no precedential value in relation to the merits of the case.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 14th day of January 2003.