

The Second Division consisted of the regular members and in addition Referee Steven Briggs when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(
(Indiana Harbor Belt Railroad Company

Dispute: Claim of Employees:

1. That the Indiana Harbor Belt Company, hereinafter known as Carrier, be ordered to restore Machinist Donald K. Ramsey, hereinafter known as Claimant, to the service of the Carrier.
2. That Machinist Donald K. Ramsey be reimbursed for all wages lost during this time at the prevailing machinist rate of pay.
3. That Machinist Donald K. Ramsey be compensated for all insurance benefits, vacation benefits, holiday benefits and any other benefits that may have accrued and were lost during this period, in accordance with Rule 36 of the prevailing Agreement, effective January 1, 1947.
4. The Carrier violated Rule 36, 26 and 35 of the controlling Agreement.

Findings:

The Second 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 were given due notice of hearing thereon.

This case was previously before the Second Division as Award 9286, dated August 11, 1982, which sustained the claim for reinstatement, back pay and other benefits.

The Award was the subject of an enforcement proceeding. On June 7, 1983, the U.S. District Court for the Northern District of Illinois Eastern Division in case captioned: International Association of Machinists and Aerospace Workers, Plaintiff, v. Indiana Harbor Belt Railroad Co., Defendant., No. 82 C 7148, issued its Memorandum Opinion and Order, which stated in part:

"...IHB's motion for summary judgment is granted and IAM's motion for summary is denied. The cause is remanded to the NRAB for further proceedings consistent with this opinion."

Pursuant to the Order of Court, the Second Division held further proceedings. After reconsidering the entire matter in the light of the Court's Opinion, the Board concludes that Carrier's decision of its highest designated officer was not out of time. However, of more fundamental importance, the Board lacks jurisdiction in the case.

Concerning the time limit issue, it is clear from the record that appeal to this Board was made prior to the final decision of the Carrier's highest designated official. There is no express time limit for that decision in the parties's grievance procedure (Rule 35). However, the absence of a specific time limit does not mean the Carrier can delay such decision ad infinitum. Indeed, such an interpretation of Rule 35 could effectively prevent the Organization from appealing any case to this Board.

In the absence of such a time limit, however, and consistent with the overwhelming majority of arbitral opinion, we concluded that the decision of the Carrier's highest designated official must be rendered within a reasonable period of time.

In the instant case the written decision of the Carrier's highest designated official was rendered on June 17, 1980. While this decision was rendered approximately 83 days from the Organization's March 26, 1980 appeal to his office, the record reveals that in the interim (e.g., their May 14, 1980, meeting) the parties were engaged in good faith attempts to settle this dispute. And the Carrier did not know until May 22, 1980, that its offer of settlement had been refused by the Claimant. Accordingly, we conclude that the Carrier's highest designated representative did not wait an unreasonable amount of time before rendering his final decision on June 17, 1980.

Regarding jurisdiction, Section 3, First (i) of the Railway Labor Act requires that the parties process claims such as that in the instant case "in the usual manner..." and, failing to reach adjustment "in this manner," they may be appealed to this Board. Such statutory language calls into question the "usual manner" of obtaining a decision of the Carrier's highest designated officer. In grievance processing generally, and in the railroad industry in particular, it is customary for employers to communicate grievance process responses in writing. Indeed, this very case contains sufficient proof that the Carrier responded in writing at each step of the parties' procedure. Thus, we do not believe that the Senior Director-Labor Relations made final determination "in the usual manner" until June 17, 1980.

Therefore, on the basis of the foregoing discussion, the Board has concluded that it has no jurisdiction. This conclusion is in harmony with numerous Board decisions. For example, Third Division Award 11910 (Coburn). Further support of the above reasoning is found in Third Division Awards 24350, 22438, 22473, 24259, 24010, 24061, 22629, and 21373.

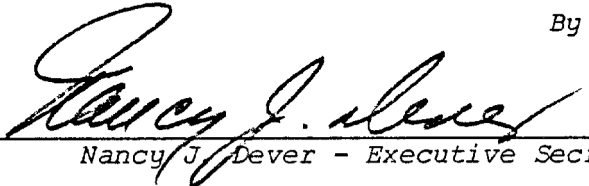
Moreover, the Board is of the firm view that even if it did have jurisdiction, it would be forced to deny the claim on the merits. The record contains sufficient evidence to support the charge of insubordination and to sustain the dismissal from service.

A W A R D

Claim disposed of in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of May, 1984