

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company violated Rule 33 - Claims or Grievances of the Communications Employes Agreement effective January 1, 1968, as amended when the Carrier officer authorized to receive the claim as per Rule 33 failed to disallow claim of Claimant within 60 days from the date the claim was filed with him.
2. That the Seaboard Coast Line Railroad Company further violated the Communications Employes Agreement effective January 1, 1968, as amended in particular Rules 4(d) and 35 when Communications Maintainer C. O. Seward was suspended ten (10) days commencing August 18, 1980 and extended through August 27, 1980 at Cayce, South Carolina.
3. That accordingly, the Seaboard Coast Line Railroad Company compensate Communications Maintainer C. O. Seward in the amount of ten (10) days pay at the pro rata rate of pay for a monthly rated Communications Maintainer and Claimant be made whole for all other rights and benefits that accrue to his position due to him being improperly suspended for ten (10) days commencing August 18, 1980 and extended through August 27, 1980.

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 employes 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.

Claimant is a communications maintainer occupying a monthly-rated position at Carrier's Cayce, South Carolina location. On July 11, 1980, Carrier notified Claimant to attend a formal investigation on the charge that he was absent without permission on July 4 and 5, 1980 in violation of the following rules:

"Rule G-1: '...Desertion...will subject the offender to dismissal.'"

"Rule 701: 'Employees must report for duty in accordance with current instructions.'"

"Rule 708: 'Employees must not absent themselves from duty, or change off with others for a tour of duty, or part of a tour of duty, without first obtaining permission from the proper officer. When leave of absence is desired, it must be requested in ample time to protect the vacancy.'"

"Fourth Paragraph of General Notice: 'The Service demands the faithful, intelligent and courteous discharge of duty.'"

Formal investigation was held on July 25, 1980, and as a result of the facts determined therein, Claimant was assessed ten (10) days actual suspension, effective August 18 through August 27, 1980. On October 7, 1980, the claim was appealed on behalf of Claimant to Mr. J. R. DePriest, Jr.; subsequently, on October 24, 1980, Superintendent W. E. Satterwhite declined the claim, and it was thereafter declined at each level of appeal on the property.

The facts in the instant case are essentially undisputed. Claimant was scheduled to take one week of his vacation commencing Monday, July 7, 1980. On Thursday, July 3, 1980, he sent a wire message to his supervisors indicating that he would be on vacation July 4 through July 13, 1980. Claimant acknowledged that he did not receive prior permission for his absences on July 4 and 5, 1980, but noted that those absences occurred on a national holiday and a stand-by day, respectively.

The Organization first contends that Supervisor J. R. DePriest's failure to timely disallow the instant claim pursuant to Rule 33 of the controlling agreement is fatal to the Carrier's position herein. Rule 33 states in pertinent part:

"1.(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance...in writing of the reasons for such disallowance..." (Emphasis added.)

A careful reading of the above language suggests that there is no violation of the rule. Rule 33 places a burden on the employee to present the grievance or claim to a particular, authorized Carrier officer. By contrast, the rule does not require that that same officer give written notice of disallowance of a claim. The rule merely requires that "the Carrier" provide such notification. (See Second Division Awards 7341, 6963, 7953). Therefore, inasmuch as the Carrier, through Superintendent Satterwhite, timely notified the Organization in writing of the declination of the claim, the Organization's claim of a procedural defect must be rejected.

The Organization further argues that suspension is improper in this case, because the penalty for failure to fulfill stand-by obligations has been provided for in Rule 4(d), to which states as follows:

"(d) If the employee fails to fulfill his stand-by obligations, as above, on the sixth day of the assigned work week or on any of the seven national holidays and the employee's birthday-holiday and it is necessary to use another employee, the regularly assigned employees monthly compensation will be reduced at the pro rata rate for the actual hours worked and paid for on his territory by such other employee, such deduction not to exceed eight hours."

In the main, the Carrier's rejoinder to the above argument is that Claimant's absences were willful, deliberate, and unauthorized. Carrier contends that Claimant's admitted violation of the rules fully justified Claimant's suspension, and that the claim should be denied in its entirety.

After a careful review of this record, the Board finds that while the absenteeism in the instant case would be indeed a serious infraction, if the willful and deliberate intent to break Company rules had been proved, there is insufficient evidence on that specific point in the record to justify such a conclusion. The record shows Claimant believed Rule 4(d) controlled his conduct and not the other rules cited by the Carrier. The Board is also of the opinion that the penalty for employees who fail to fulfill their stand-by obligations has been articulated in Rule 4(d) of the controlling agreement, as set forth above.

The record herein indicates that Claimant did not fulfill his stand-by obligations on a national holiday and on the sixth day of his work week, and accordingly, he can be docked to the extent that it was necessary to place another employee on Claimant's assignment for those two days. Given the specific and controlling language of Rule 4(d), however, the Board finds that the imposition of an additional penalty, in the form of a ten day suspension, is not justified, when it is based on a finding that Claimant absences were in willful and deliberate contravention of Rules not containing such penalty. While Rule 4(d) may not always be an exclusive penalty for failure to fulfill stand-by obligations where other rules are also breached, the existence of the specific penalty controls in this instance since the failure to stand-by is the sole breach of duty proved.

Therefore, on the merits, the Board sustains the instant claim.

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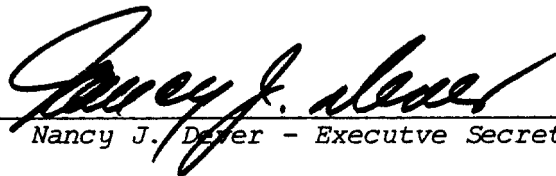
Award No. 10066
Docket No. 10085
2-SCL-EW-'84

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 5th day of September, 1984.