Award No. 4015
Docket No. 3933
2-MP-MA-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Machinists)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the officials of the Missouri Pacific Railroad Company intimidated, coerced and discriminated against Machinist W. T. Dee during a formal investigation beginning February 1, 1960 causing Machinist Dee to have an acute anxiety reaction which resulted in his hospitalization and loss of earnings from noon February 2, 1960 until February 27, 1960.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Machinist W. T. Dee at straight time rate for the balance of the day of February 2nd and eight (8) hours per day at the straight time rate for February 3rd and each work day thereafter until he was returned to work on February 27th, 1960.

EMPLOYES' STATEMENT OF FACTS: Machinist W. T. Dee, hereinafter referred to as the claimant, is employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, at Kansas City, Missouri. Mr. Dee also is a committeeman for the machinists' organization at this point.

The claimant was notified by Master Mechanic, Mr. J. W. McCaddon to report to the office of the master mechanic at 8:30 A. M., Friday, January 22, 1960 for formal investigation to develop the facts and place responsibility in connection with conflicting testimony given at investigation of Locomotive Foreman L. A. Dietrich on January 11 and 12, 1960. However, Local Chairman C. E. Thompson addressed letter under date of January 20, 1960, to Mr. McCaddon requesting a postponement of the investigation since Mr. Dee's representatives could not be present on January 22, 1960. Mr. Thompson's request was granted and the investigation was held February 1, 1960.

claim is not supported by any rule in the agreement and it must, therefore, be denied.

This time claim requests your Board to order the carrier to compensate claimant "for the balance of the day of February 2nd and eight (8) hours per day at the straight time rate for February 3rd and each work day thereafter until he was returned to work on February 27th, 1960." Claimant was off from noon February 2 to February 27, 1960, because of his own illness. The shop craft agreement does not have a so-called "sick pay" rule whereby employes are paid for a limited number of days off sick each year. The pay rules in the Agreement provide for compensation for work performed. They do not provide for compensation while off sick. The agreement does provide for vacation allowances and holiday pay but not for sick pay. This claim is not based on any rule in the Agreement.

There can be no doubt that claimant was off work because of illness. The local chairman in his letter presenting the claim to the Master Mechanic stated claimant "had to be taken to the hospital which caused him to lose considerable time from his job." The employes' statement of claim also shows claimant was hospitalized during the period of the claim. The reason claimant may have become ill need not be considered in determining the validity of the claim. The agreement does not provide for sick pay under any circumstances. We can do no better than repeat the decision given the general chairman by the chief personnel officer in his letter of July 1, 1960. In declining the claim, the chief personnel officer wrote

> "Concerning the merits of the matter, I can find no basis whatever for a claim under the Agreement for a man who loses time because of his own alleged illness and therefore the claim, in its entirety, is declined."

For the reasons fully stated in this submission, your Board need not consider the merits of the claim because the claim was not timely presented as required by Rule 31. Therefore, the claim should be dismissed. If, for any reason, your Board should proceed to a consideration of the merits of the claim, the claim must be denied in any event because shop craft employes including the claimant are not entitled to pay while off sick.

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 waived right of appearance at hearing thereon.

The Claimant, Machinist W. T. Dee, has been employed by the Carrier at Kansas City, Missouri. He has also been a Committeeman for the Machinists' Organization at that point. His claim arose out of the following facts:

On January 11 and 12, 1960, an investigation hearing was held involving Locomotive Foreman L. A. Dietrich who was charged with a violation of General Notice No. 27 pertaining to certain safety rules. The Claimant testified as a witness at said hearing. Since the Carrier believed that his testimony conflicted with that of other witnesses as well as with the Carrier's conclusions drawn from on-the-ground observations, it ordered a formal investigation of the Claimant "to develop the facts and place the responsibility in connection with conflicting testimony given . . .".

Accordingly, an investigation hearing was held which started in the morning of February 1, 1960, and continued during that day. It was resumed in the morning the following day (February 2, 1960) and recessed for lunch at 12:00 Noon. During that recess, the Claimant became ill and was taken to a hospital by an ambulance. His illness was diagnosed by the attending physician as an acute anxiety reaction. He was discharged from the hospital on February 8, 1960, and returned to work on February 27, 1960. He received no pay for the period of his illness. The investigation hearing was resumed on March 10, 11, 14, 15, and 16, 1960. No disciplinary penalty was imposed upon the Claimant following the investigation.

He claims that he was intimidated, coerced and discriminated against by the Carrier's interrogating officers during the hearing on February 1 and 2, 1960, and that such treatment caused his illness. He requests that the Carrier be ordered to compensate him for his loss of earnings from noon February 2 until February 27, 1960. For the reasons hereinafter stated, we hold that we lack authority to adjudicate the instant claim.

1. Section 3(i) of the Railway Labor Act confers upon us jurisdiction to hear and decide disputes between an employe or group of employes and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions. The courts have construed this Section to mean that our jurisdiction is confined to the adjudication of disputes between employes or their organizations and carriers based on the provisions of a collective bargaining agreement. See: Pennsylvania Railroad Company v. Day, 360 U. S. 548, 550; 79 S. Ct. 1322, 1324 (1959).

2. The Claimant mainly relies on Rule 32(a) of the applicable labor agreement which provides that no employe shall be disciplined without a fair hearing by a designated officer of the railroad. The clear and unmistakable intent of this Rule is to assure an employe of due process in matters of discipline. However, the Rule does not provide for damages in case the methods or procedures used by a hearing officer result in mental or physical injury of an employe. As stated above, we are only authorized to interpret or apply the provisions of a collective bargaining agreement but have no power to amend, modify, subtract from or add to them. Since the Claimant was not disciplined, the question as to whether or not he had a fair hearing is immaterial as far as we are here concerned.

3. In further support of his claim, the Claimant asserts that the Carrier violated Rule 33 of the labor agreement which prescribes, as far as pertinent, that the Carrier shall not discriminate against Committeemen who, from time to time, represent other employes. Even if one assumes for the sake of argument that the Carrier's officials discriminated against the Claimant because of his position as a Committeeman of his craft, Rule 33 does not sustain his claim. It does not provide for damages in the event a violation thereof

causes a mental or physical injury of a Committeeman. As pointed out hereinbefore, we have no authority to amend the Rule to such effect.

4. In its ex parte submission brief, the organization contended that the Claimant "was continually harrassed by the interrogating officers which resulted in his becoming seriously ill and being confined to a hospital" (p.2); that "his illness was due directly to the tactics of the (Carrier's) officials" (p.3); that his "subjection to unwarranted abuse from his interrogators caused his mental and physical breakdown" (p.5); and that "his illness was brought on by the abuse and harrassment of Carrier officials who were only supposed to develop the facts in the case, not drive the Claimant to a mental breakdown by their torturous methods of interrogation" (pp.7-8). In its rebuttal brief, the Organization also argued that "following a day and one half of this third-degree investigation by two hearing officers on trumped-up, vague charges and the improper and unfair procedure of the investigation, the Claimant suffered a mental breakdown, requiring hospitalization and treatment by Carrier's doctors" (p.12). Furthermore, when Local Chairman Thompson filed the original grievance with Master Mechanic Dent, he complained, among other things, that "due to the extreme pressure applied by you as interrogating officer, he (the Claimant) collapsed and had to be taken to the hospital which caused him to lose considerable time from his job" (Carrier's Exhibit A).

A critical examination of the above statements clearly demonstrates that what the Claimant actually seeks in the instant case is, in fact and in law, compensatory damages for a personal injury alleged arising out of and in the course of his employment relations with the Carrier. Section 3(i) of the Railway Labor Act does not bestow authority upon us to adjudicate such a claim. Accordingly, without prejudice to the merits of this dispute and without opinion as to the legal rights, if any, of the Claimant in the proper forum, the instant claim is dismissed.

5. Since we have dismissed the claim before us purely on jurisdictional grounds, we refrain from expressing any opinion on the fairness or unfairness of the investigation hearing here complained of as well as on the validity of the Carrier's procedural objections.

AWARD

Claim dismissed for lack of jurisdiction.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary.

Dated at Chicago, Illinois, this 29th day of June 1962.