

Award No. 6061
Docket No. 5923
2-SCL-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)

SEABOARD COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current applicable agreement the Carrier violatively assigned a carman from Charlotte, North Carolina, to make repairs with an electric welder to SAL 16420 and N&W 73011 at Monroe, North Carolina.

2. That accordingly the Carrier be ordered to compensate Carman G. W. Moss Jr. three (3) hours at time and one half pro rata rate.

EMPLOYES' STATEMENT OF FACTS: Carman G. W. Moss, Jr. is employed at Monroe, North Carolina and is a qualified welder, both electric and acetylene.

Carman Moss placed his name on the overtime board at Monroe, N. C.

The carmen at Monroe, N. C. and at Charlotte, N. C. have point seniority and are on separate seniority rosters.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including carrier's highest officer, all of whom have declined to make satisfactory adjustment.

The agreement of January 1, 1968, as subsequently amended, is controlling.

POSITION OF EMPLOYES: When a carman from Charlotte, North Carolina, was assigned to perform work at Monroe, North Carolina, General Rule 15 was violated and I quote pertinent section,

"(a) The seniority of employees in each craft covered by this agreement shall be confined to the point employed. . . ."

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 Carrier contends that claim should be dismissed because of failure of Petitioner to abide by the contractual time limits at the stage of first appeal, as set forth in Rule 30 of the Agreement. The pertinent part of that Rule reads as follows:

"1. (a) All claims or grievances must be presented in writing by or on behalf of the employe 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 such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the carrier as to other similar claims or grievances.

(b) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance, and the representative of the carrier shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed, but this shall not be considered as a precedent or waiver of the contentions of the employees as to other similar claims or grievances. It is understood, however, that the parties may, by agreement, at any stage of the handling of a claim or grievance on the property, extend the 60-day period for either a decision or appeal, up to and including the highest officer of the carrier designated for that purpose."

The sequence of the handling of the claim was as follows:

1. Letter of July 9, 1968, from Claimant to General Master Mechanic, stating in part: "I am claiming three hours (3) at Carman Welder overtime rate. . . ."
2. Reply of July 10, concluding: "I do not see any rule violations, and your claims are being declined."
3. Letter of September 4 from Local Chairman to the same General Master Mechanic, beginning: "On July 9, 1968, Carman G. W. Moss, Jr. of Monroe, N. C., presented a claim to you. Your declination of July 10, 1968, . . . was not satisfactory to Mr. Moss. He has asked me to rehandle this case in his behalf. Please accept this as a time claim and grievance. . . ."

4. Reply of September 6, stating in part: "I note that you have a copy of my letter to Mr. Moss . . . indicating my decision in this matter. Therefore, your request is declined."
5. Letter of September 13 from Local Chairman to General Master Mechanic, stating in part: "This is to notify you that I am appealing your declination of my claim . . . to the next higher officer of the carrier through my General Chairman, and also the same claim that was presented by Mr. Moss."
6. Letter of October 21 from General Chairman to Asst. Vice President-Equipment, appealing the claim.

The Carrier contends that the 60-day limit for appeal runs from original denial of claim on July 10, so that time lapse until appeal was about 100 days. The Organization contends that it runs from denial of the Local Chairman's claim on September 6, so that time lapse was only about 45 days.

We concur with Carrier's contention. Rule 30 provides that claim may be presented by the employe or on his behalf. In this case it was presented by the employe, who specifically referred to it in his letter as a claim. A specific denial was sent him on July 10. Local Chairman's letter of September 4 states that he has been asked to rehandle the case. Rule 30 makes no provision for any rehandling. It states clearly that appeal "must be taken within 60 days from receipt of notice of disallowance." Each step of the procedure may be taken once by either the employe or his representative, but it cannot be taken separately by both. The Organization's interpretation of the rule would apparently permit a claim to be carried to the highest level by an employe and then be reprocessed from the beginning by the Organization, thus postponing a final determination by many months.

There is no indication that the Local Chairman was in any way uninformed or misinformed regarding the required procedure. His re-presentation of the claim on September 4 shows that he knew that the claim had already been presented and denied at the first level. Nor is there any possibility that he did not know to whom an appeal should go. His notice of appeal of September 13 states that the appeal will be made through his General Chairman, so that he does not even need to know who is the Carrier's next higher officer. We therefore find no basis on which the failure of Petitioner to present an appeal within 60 days of the original denial can be disregarded.

Our decision in this case is consistent with our Award No. 3777 and Third Division Award No. 12391. The Organization has not cited any award of this Board that would support its position on timeliness in this case.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 11th day of December, 1970.

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