

The Second Division consisted of the regular members and in addition Referee Irving T. Bergman when award was rendered.

Parties to Dispute: (System Federation No. 16, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Firemen & Oilers)
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That under the current agreement, Laborer George C. Crenshaw, was unjustly dismissed from the service of the Carrier effective 2:30 p.m., April 1, 1971.
2. That accordingly the Carrier be ordered to reinstate this employee with all seniority and employee rights unimpaired and pay for all time lost retroactive to 2:30 p.m., April 1, 1971 including wages, holiday pay, vacation pay, health and welfare benefits, life insurance, his record cleared of charges made, and any compensation due would be without deduction because of other earnings.

Findings:

The Second 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 waived right of appearance at hearing thereon.

Claimant was notified of dismissal by letter dated May 10, 1971 after a hearing for admittedly striking a fellow employee on the head with a pinch bar causing loss of one eye. Claimant was also convicted of the crime and released on parole on September 25, 1972. The incident occurred on April 1, 1971.

The Organization filed the appeal by letter of June 17, 1971. It was handed to the Assistant Foreman Locomotive Department. He stated that as an Assistant Foreman, he never received correspondence from any local committee. Because the letter was addressed to the Assistant Roundhouse Foreman, which was not his title, the Assistant Foreman Locomotive Department who was a witness at the hearing assumed that

all those present at the hearing received a copy of the letter. Accordingly, he filed the letter and later destroyed it as having nothing to do with him.

By letters dated October 8, 1971 and October 11, 1971, the General Chairman notified the Assistant Roundhouse Foreman and the General Foreman-Roundhouse, that the time limit to answer had expired and that the claim must be allowed as presented according to the August 21, 1954 Agreement. By letter dated December 3, 1971, the Assistant Roundhouse Foreman answered the General Chairman, stating that he never received a letter of appeal dated June 17, 1971, and declined the appeal as not supported by the rules. Also by letter dated December 3, 1971, the General Roundhouse Foreman wrote to the General Chairman. In this letter the appeal was declined on the procedural ground that the Assistant Foreman Locomotive Department was not a proper officer to receive an appeal, and also declined on the merits.

The list of authorities with whom claims and grievances should be handled stated, for this location, Asst. Roundhouse Foreman-1st Shift, Roundhouse Foreman, Car Foreman 2nd & 3rd Shifts. The Organization received written notice of this and it is not contradicted in the Record. The Organization contends that when the Assistant Foreman Locomotive Department received a letter addressed to the Assistant Roundhouse Foreman-1st Shift, he should have delivered it. On this basis it is argued that there was compliance with the appeal procedure.

In a recent case, Award No. 6750, an appeal was placed in a basket provided for receipt of notices but the proper officer did not receive it. In dismissing the claim, prior Awards were followed which hold that although a written document is forwarded through a usual channel for delivery, if receipt of the document is denied, the burden is on the party claiming delivery to prove that it was received, see Second Division Award No. 3656, Third Division Awards No's. 11575, 14695, 10173, 11505, 14354, 15395, 15496. In Third Division Award 11568, it was stated: "To allow a claim without a consideration of the merits, on a presumption that a letter containing the claim was delivered when the receipt has been denied, could create chaos." These cases include delivery through the U.S. Mail.

In the present case, the Assistant Foreman Locomotive Department is admittedly not the proper officer to receive appeals and it is not demonstrated by the Petitioner nor conceded by the Carrier that it was usual to submit appeals through him. The argument that he should have forwarded the appeal to the proper authority is without merit and in violation of the August 21, 1954 Agreement and the Railway Labor Act, Section 3, First (1).

Form 1
Page 3

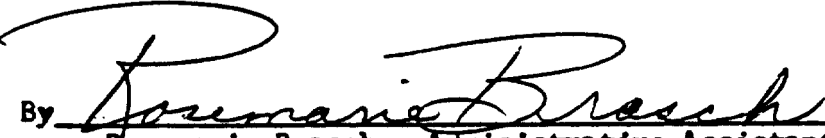
Award No. 6744
Docket No. 6495
2-N&W-FO-'74

A W A R D

Claim Dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of July, 1974.