

The Second Division consisted of the regular members and in addition Referee James C. McBrearty when award was rendered.

Parties to Dispute: (System Federation No. 2, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Alton & Southern Railway Company

Dispute: Claim of Employees:

1. That Carman Robert Muncy was unjustly treated by the Alton and Southern Railway Company when said Railroad dismissed him on September 4, 1975.
2. That, accordingly, the Alton and Southern Railway Company be ordered to reinstate this employe with seniority rights unimpaired and compensate him at Carmen's pro rata rate for all time lost, plus, six per cent (6%) interest for all wages deprived of. Also, fringe benefits (vacations, holidays, premiums for hospital, surgical, medical and group life insurance) deprived of since September 4, 1975, until advised on February 5, 1976, that he was being reinstated to service and instructed to report for work to protect his seniority.

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.

Claimant is a Carman working at Carrier's East St. Louis, Illinois, Humping Yards as a Car Inspector on the 11:00 PM to 7:00 AM shift. He has approximately seven (7) years and four (4) months seniority.

On August 22, 1975, Claimant was notified to appear on August 26, 1975, for a formal investigation "to develop the facts and place responsibility, if any, for your reported failure to properly perform your duties in connection with the handling of Car MP 352665 at or about 12:01 AM, August 20, 1975."

The investigation was postponed until 9:00 AM Wednesday, September 3, 1975.

On September 4, 1975, Claimant was notified by Carrier that effective that date he was being dismissed from service of Carrier "for failing to perform the duty of your assignment on August 20, 1975."

On February 5, 1976, Claimant was notified by Carrier that he was being recalled to service as of that date because "we feel the discipline has been duly served."

The background facts in the record before us indicate that on August 20, 1975, Claimant occupied the position of Carman assigned at the Crest of the Carrier's East St. Louis Hump Yard. An important part of the duties and responsibilities assigned to the occupant of this position is the inspection of cars for defects or conditions which would make them unsafe for movement over the Hump and through the retarders into the classification tracks in the Bowl Yard. When such defects or conditions are observed, the Carman is required to notify the Hump Yardmaster before permitting the movement of such cars over the Hump.

During Claimant's tour of duty, approximately 12:01 AM, August 20, 1975, Car MP 352665, which had been inspected by Claimant, was humped into track number 039, which was clear at the time. The retarders were unable to control the speed of MP 352665, recorded by the Hump Yardmaster at 16 m.p.h. coming out of the retarders. As a result, the car ran out the west end of track 039 and into the side of a cut of cars on the West Lead, after which it derailed, fouling track 038.

The humping operation was stopped immediately and an inspection was made of the retarders and the car, whereupon a white substance (later identified as ferrous copper sulfate) was found caked on the wheels, undercarriage, and ends of car MP 352665. The same substance was found on the retarders.

Claimant states that he did not observe any of this substance on the flanges of the wheels, and therefore thought the condition of car MP 352665 would not impair its control through the retarders. Claimant also states that he did not fail to comply with General Order No. 14 dated January 1, 1975, which requires the reporting of cars that have grease on the inside and outside of the wheels.

Before turning to the merits of the instant case, however, Petitioner has alleged throughout the handling of this case on the property and before this Board that Carrier violated Article V(a) of the August 21, 1954 Agreement.

Article V(a) of the August 21, 1954 Agreement provides as follows:

"(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 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 employee 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 contention of the Carrier as to other similar claims or grievances." (Emphasis added)

It is beyond dispute that Superintendent Needham gave no reasons for his denial of the Local Chairman's claim in his letter to the Local Chairman dated November 14, 1975. Moreover, it was not until February 9, 1976 that D. M. Tutko, Chief Mechanical Officer gave reasons for the Carrier's denial of the claim in his letter to the General Chairman. This was well beyond the 60-day limit prescribed in Article V(a) of the August 21, 1954 Agreement.

The pertinent language in Article V(a) is clear and unequivocal in the event of failure to timely notify whoever filed the claim in writing of the reasons for such disallowance. Accordingly, we have no alternative but to sustain the instant claim except for the awarding of six (6) percent interest and fringe benefits. (See Second Division Awards 5512, 4594, and 3312; Third Division Award 9933). We have no jurisdiction or authority to sustain the claim for insurance premiums or interest.

A W A R D

Claim sustained to the extent indicated above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 8th day of September, 1977.

