

The Second Division consisted of the regular members and in addition Referee Robert A. Franden when award was rendered.

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

Dispute: Claim of Employes:

1. That Carman B. Loomis was improperly suspended on July 3, 1975, and subsequently improperly discharged.
2. That the Carrier violated the procedural provisions of Article V of the National Agreement dated August 21, 1954, when letter dated August 15, 1975 directed Mr. Emmett D. Cox, Local Chairman, from Mr. W. B. Needham, Superintendent, The Alton and Southern Railway Company, failed to be complete or concise by not setting forth in writing the reason for declining claim.
3. That accordingly, the Carrier be ordered to restore Carman B. Loomis to service with seniority and other rights unimpaired and paid for all straight time lost, including payment for Health and Welfare benefits and other benefits that are a condition of employment, plus six per cent (6%) interest on wages.

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.

This is a discipline case based upon an alleged improper dismissal of claimant for consuming intoxicating beverages while on duty.

Prior to any consideration of the merits of this case we must first determine the procedural issue raised by the organization, to wit: that the denial of the claim by the carrier in its August 15, 1975 reply to the organization's claim dated August 11, 1975, did not meet the requirements

of Article V of the National Agreement dated August 21, 1954 in that the reasons for denying the claim were not set out therein.

Article V, paragraph (a) of the August 21, 1954 National Agreement reads 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 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 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 contentions of the Carrier as to other similar claims or grievances."

The letter from Carrier dated August 15, 1977, declining the claim, reads as follows:

"Reference to your letter August 11, 1975 in connection with your remarks and views reference to investigation conducted July 2, 1975 with Mr. B. Loomis.

I refer you to the third paragraph of your letter requesting Carman Loomis be reinstated to service with seniority rights, vacation rights, sick leave benefits and all other benefits that are a condition of employment unimpaired and compensation for all lost time plus six (6) percent annual interest is hereby declined."

We have reviewed the many awards furnished this Board dealing with the sufficiency of a denial of a claim in terms of compliance with paragraph (a) of Article V. It has been held that "There is no basis for the claim and it is accordingly denied" (Award 16576 Third Division), "I can find no basis for your claim" (Award 16780 Third Division), and, "The above claim is declined account not supported by the rules of your current working agreement." (Award 3426 Fourth Division) all meet the requirements of paragraph (a) of Article V. Award 7015 cited by the Carrier holds that a denial which states, "Confirming conference held in Assistant Superintendent W. J. Kugler's office on January 15, between you and Mr. Kugler it is still my position not to reinstate former Carman J. A. Mance and R. J. McDowell, and your request is respectfully declined, and any further handling will have to be taken up with our personnel department at Tyler, Texas." is sufficient.

The letter from Carrier officer Needham dated August 15, 1975 quoted above does nothing more than state that the claim is declined. No reference is made to earlier denial letters or conferences, to the Carrier's position that no rule in the agreement has been violated, to a defense based upon the claim lacking basis or anything indicating whether the claim is being denied on the merits or on some procedural issue.

The provisions of Article V paragraph (a) have been rather liberally construed but we believe that to hold that the letter declining the claim in the instant case meets the requirements of that paragraph would in effect remove from the agreement the words "notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance."

We will allow the claim as presented, with the caveat that under the agreement this award does not become a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.

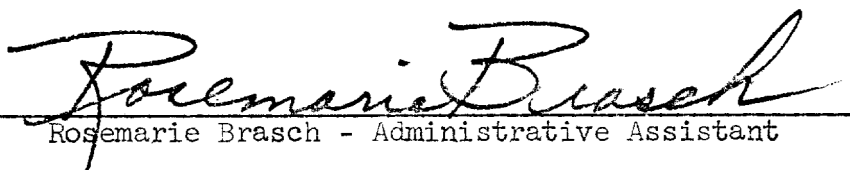
A W A R D

Claim sustained.

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 14th day of October, 1977.