

The Second Division consisted of the regular members and in addition Referee Steven Briggs when award was rendered.

Parties to Dispute: (International Association of Machinists and
 (Aerospace Workers
 (Indiana Harbor Belt Railroad Company

Dispute: Claim of Employees:

1. That the Indiana Harbor Belt Company, hereinafter known as Carrier, be ordered to restore Machinist Donald K. Ramsey, hereinafter known as Claimant, to the service of the Carrier.
2. That Machinist Donald K. Ramsey be reimbursed for all wages lost during this time at the prevailing machinist rate of pay.
3. That Machinist Donald K. Ramsey be compensated for all insurance benefits, vacation benefits, holiday benefits and any other benefits that may have accrued and were lost during this period, in accordance with Rule 36 of the prevailing Agreement, effective January 1, 1947.
4. The Carrier violated Rule 36, 26 and 35 of the controlling Agreement.

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.

The Claimant joined the Carrier's employ in mid-1976, and was a Machinist at the Gibson Enginehouse, Hammond, Indiana, when this dispute originated. About April 17, 1979, he was pulling a ring down to be welded and a piece of foreign matter flew into his eye. He allegedly did not think the incident was very serious and did not report it to the Carrier. During work the following day he requested medical attention and was sent to the Hammond Clinic.

The Carrier has a practice of requiring injured employees to sign an "Injured Employees Ten Day Report" which indicates details of the work they were able to perform during the 240 hours immediately following their injuries. The Claimant's immediate supervisor, Foreman E. Krejci, approached him and asked him to sign such a form. The form in question indicated that the Claimant had performed his normal duties on assigned work days from April 18, 1979, through April 28, 1979, with

the exception of April 27 when he was off with the flu. The Claimant refused to sign the form, allegedly because his doctor had advised him against doing so.

Later that day, Foreman Krejci explained the situation to General Foreman Love, whereupon both men met with the Claimant. Love apparently explained to the Claimant that his signature on the form would not release the Carrier from any liability but he still refused to sign, adding that such refusal was on the advice of his lawyer. It should be noted that the Claimant did not dispute the content of the form, and indicated to Krejci and Love that it appeared to be accurate.

Foreman Krejci attached a note to the form to the effect that the Claimant had refused to sign and sent it to the General Foreman's office. The next day, General Foreman Maglish discussed the situation with the Claimant in Foreman Krejci's presence. The Claimant indicated again that the information on the form was accurate, but that he had been advised by his attorney not to sign it. Maglish explained that he would be taken out of service if he refused to sign the form, but the Claimant still refused. He was then taken out of service pending investigation.

In a May 3, 1979, letter from General Foreman Fazekas the Claimant was presented with the following charges:

"Violation of Safety Rule #4000 and insubordination in that you refused to finalize company documents on May 2, 1979."

An investigatory hearing was conducted on May 7, 1979, and the Claimant was notified in a letter dated May 11, 1979, that he was being dismissed from the Carrier's employ effective May 2, 1979.

After appropriate processing at lower levels the discipline was ultimately appealed by letter dated March 26, 1980, to the Senior Director-Labor Relations, the highest officer of the Carrier designated to handle such disputes. A meeting was held on May 14, 1980, during which the Senior Director-Labor Relations offered to the General Chairman to reinstate the Claimant on a leniency basis without pay. The offer was refused by the Claimant and the Senior Director-Labor Relations was so notified in a May 22 letter from the General Chairman quoted in part as follows:

"Mr. Ramsey has notified me that he does not accept the offer made by the Carrier. In accordance with the provisions of the Agreement, I am further progressing this claim to the Board."

The Organization appealed to the Board on June 3, 1980. The Senior Director-Labor Relations denied the claim in a letter of June 17, 1980.

Both parties have raised procedural arguments. The Carrier argues that the Board has no jurisdiction to hear this dispute on its merits, since the Organization appealed to the Board (June 3, 1980) before receiving final determination from the Senior Director-Labor Relations (June 17, 1980), thereby violating Section 3, First (i) of the Railway Labor Act. This Section provides in part:

"The disputes between an employee ... and a Carrier ... growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions, ... shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred to ... the appropriate division of the Adjustment Board ..."

The Organization argues that the Carrier's response at the Chief Operating Officer level was untimely. The claim was appealed in writing to the Senior Director-Labor Relations on March 26, 1980, and he did not deny the claim in writing until June 17, 1980, a total period of about 71 days. The controlling language is found in the "Agreement and Memorandum dated August 21, 1954 between Railroads Represented By the Eastern, Western and Southeastern Carriers' Conference Committees and The Employees of Such Railroads Represented by the Employees' National Conference Committee, Fifteen Cooperating Railway Labor Organizations." Article V of that Agreement states in pertinent part:

"(a) ... 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.

(c) The requirements outlined in paragraphs (a) and (b), pertaining to appeal by the employee and decision by the Carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Carrier to handle such disputes. All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employee or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board ..."

Article V(a) and (c) above dictate the Board's decision in this matter. The highest designated officer for the Carrier (Senior Director-Labor Relations) did not respond in writing to the claim within the contractually specified 60 days. According to the language of V(a), the Board has no choice but to sustain the claim on a procedural basis. Indeed, to do otherwise would violate the language of the Article.

The Carrier is correct in asserting that the Organization appealed to the Board before it received final written response from the Carrier's "highest designated officer;" however, for the Board to implement the Carrier's interpretation of Section 3, First (i) of the Railway Labor Act it would be necessary for the Carrier to have complied with the time limits negotiated in Article V(a) and (c)

above. Indeed, were we to do otherwise a Carrier might prevent a claim from reaching the Board simply by delaying the highest designated officer's response ad infinitum.

Having decided the matter on a procedural basis, there is no need for the Board to consider the merits.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 11th day of August, 1982.