

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated the rules of the current Working Agreement, and Associated Rules; namely, Rule 32, at Buffalo, New York.
2. That the Norfolk and Western Railway Company violated Article V (a), National Agreement dated August 21, 1954, when it failed to answer initial claim within the mandated sixty (60) day time limit.
3. That the Norfolk and Western Railway Company be ordered not to resume investigation concluded on November 19, 1979, for Carman D. Pawlak, and since the company did not fulfill its obligation of taking a complete stenograph report, that the whole matter be dropped.

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.

On November 19, 1979, the Carrier conducted a formal investigation in connection with certain charges against the Claimant. The hearing began at 1:05 p.m. and concluded at 7:40 p.m. No stenograph reporter was present. The Carrier used a tape machine to record the verbatim statements of the participants.

In a letter dated December 5, 1979, General Foreman M. S. Bishop notified the Claimant as follows:

"... This investigation must be resumed due to malfunction of recorder tape that occurred and all testimony presented is not available to make a conclusion of this formal investigation."

The Organization responded by means of a January 6, 1979, (subsequently corrected to read "1980") letter from Local Chairman A. W. Kelley:

"... During the investigation we objected to the use of a tape recorder. We also objected when the tape malfunctioned. Our objections were overruled by the hearing officer and the investigation continued to a conclusion.

We do not recognize your right to resume the formal investigation as you were not the conductor of the hearing but the charging officer and once the investigation began it was beyond your jurisdiction.

It is the position of the Local Committee that the rules of the current Working Agreement, and Associated Rules, have been violated; namely, Rule 32.

In view of the above we request that the investigation not be resumed and since the company did not fulfill its obligation of taking a complete stenographic report that the whole matter be dropped."

The Organization believes that the above letter is a grievance within the meaning of Rule 32 of the controlling Agreement. Furthermore, it asserts that the Carrier violated Article V (a) of the National Agreement dated August 21, 1954, quoted in part below:

"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."

According to the Organization, the "grievance" was filed in the usual and customary manner with the General Foreman at Buffalo, N.Y., and the Carrier failed to respond in writing, thus violating Article V (a).

The Carrier does not recognize Local Chairman Kelley's letter of January 6, 1980, as a formal claim or grievance and informed the Organization of that position during the reconvened hearing on January 9, 1981. The Carrier maintains that the January 6 letter does not identify itself as a formal claim or grievance. Furthermore, the Carrier argues, grievances are filed over instances which have already occurred; Kelley's letter was written and received prior to the resumed hearing. The Carrier also maintains that the Organization seeks a form of injunctive relief which the Board is not empowered to give.

Issues relating to the use and malfunctioning of the tape machine, the stenographic record, and the resulting resumption of the investigatory hearing in this case have already been addressed by this Board in a related claim from the same parties, Award No. 9686. It would be repetitive to review them again here, since our conclusions remain unchanged. Accordingly, this Award is strictly limited to the question of whether Mr. Kelley's January 6, 1980, letter is a formal claim or grievance.

After carefully reviewing the substance of Kelley's January 6, 1980, letter we have concluded that it is not a formal claim or grievance. The principle reason for this conclusion is the Organization's request therein "... that the investigation not be resumed ..." At the time the letter was written, one of the actions it complains about (i.e., resumption of the investigatory hearing) had not yet taken place.

Essentially, the Organization claims that resumption of the hearing would be a violation of Rule 32 of the controlling agreement; it does not claim in the January 6 letter that such a violation had taken place. And Rule 32 clearly confines grievances to alleged violations which have already taken place:

"GRIEVANCES

Should any employe subject to this agreement believe he has been unjustly dealt with or any of the provisions of this agreement have been violated, he shall have the right to take the matter up with his foreman in person or through the duly authorized local committee within ten days ..." (emphasis added)

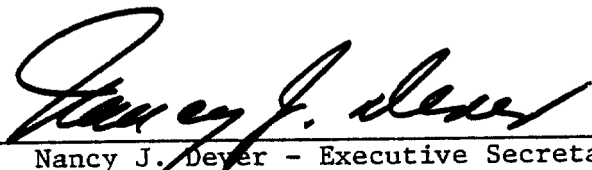
Thus, Rule 32 does not give employes the right to file grievances over events which have not yet occurred. Rather, it advances an employe right to formally appeal alleged agreement violations or unjust management actions, and the Board supports that negotiated right. We cannot, however, go beyond what the parties themselves have bargained and sanction a right to grieve over events which have not yet taken place.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 5th day of October, 1983.