

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

PARTIES TO DISPUTE: (International Association of Machinists
(and Aerospace Workers
(
(St. Louis Southwestern Railway Company

DISPUTE: CLAIM OF EMPLOYEES:

That Machinist Apprentice C. Rucker, Jr., be reinstated to the service of the St. Louis Southwestern Railway Company and compensated at the pro rata rate for all time lost commencing September 10, 1980, in addition to any other wages earned elsewhere, and all benefits accruing to other employees in active service including vacation rights and seniority unimpaired. A claim is also made for actual loss of payment of insurance on his dependants and hospital benefits for himself, and that he be made whole for pension benefits including railroad and unemployment insurance, and 6% per annum compounded annually on the anniversary date of claim, account Carrier violation Rule 24.

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 employes 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, a machinist apprentice, was charged with violating Rules 801, 802, and 804 by entering into an altercation with another employe and threatening him with a firearm. A formal investigation was held on September 16, 1980, and on October 3, 1980, the Claimant was advised of his termination by the letter set forth below:

"Formal investigation was conducted September 16, 1980, in office of General Foreman-Trainer, Pine Bluff, Arkansas, in connection with your alleged violation of Rule 801 of the Rules and Regulations Governing Mechanical Department Employees, that portion reading: 'Employes will not be retained in the service who are careless of the safety of themselves or others, insubordinate, --- quarrelsome or otherwise vicious ---.' 'Any act of hostility, misconduct or willful disregard of negligence affecting the interest of the Company is sufficient cause for dismissal and must be reported.' Also in connection with your alleged violation of Rule 802 of the Rules and

Regulations Governing Mechanical Department Employees, that portion reading: 'Employees must not enter into altercations, --- while on duty.' And finally with your alleged violation of Rule 804 of the Rules and Regulations Governing Mechanical Department Employees, that portion reading: 'Unless authorized by an officer of the Company, employees are forbidden to have firearms, or any other dangerous weapon in their possession while on the property.'

For your responsibility in this matter, we developed in the investigation, you are hereby dismissed from the service of this Company.

Please arrange to turn in all Company property now in your possession.

Acknowledge receipt and understanding of this letter on attached copy and return to the undersigned.

S/D. L. MINTER
Locomotive Plant Manager"

The Claimant's dismissal was appealed by the Local Chairman by letter dated October 28, 1980, wherein he asserted the action taken was in violation of Rule 24 in that the hearing was not fair and the charges were not proper nor were they proven. Two days later, Carrier's Plant Manager responded, as follows:

"Reference your letter of October 28, 1980, appealing the dismissal of Machinist Apprentice C. Rucker Jr. in my letter of October 3, 1980.

This is to advise you that your appeal is respectfully denied."

On November 26, 1980, the Local Chairman wrote to Plant Manager Minter and advised him that he did not give a reason for his decision. Minter was also informed the Local Chairman was rejecting the decision and appealing. The General Chairman addressed an appeal letter to the Carrier's highest officer on December 11, 1980, and he, too, raised the issue of the procedural defectiveness of the Carrier's denial.

In consideration of the foregoing, it is incumbent upon this Board to initially consider the procedural issue raised that, in denying the Organization's claim, the Carrier did not meet the requirements of Article V of the National Agreement dated August 21, 1954. 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."

Our review of the many awards submitted dealing with the issue of what, in fact, constitutes sufficient compliance with Article V, Paragraph (a) confirms our conclusion that the language is clear and unambiguous. Simply stated, the disallowance of a claim requires "the reasons for such disallowance" to be communicated in accordance with Paragraph (a). "The provisions of Article V, Paragraph (a) have been rather liberally construed..." (Award No. 7371, Second Division) The logic behind that observation is that "reasons" for denial are multiple and, sometimes, communicated in obscure and brief language. Award 7371, supra, quotes many prior holdings of this Board. What emerges from such a review is that, however brief or obscure, this Board has found the denial letter to either contain or incorporate by reference, a reason(s) for the denial. It need not be extensive. "I can find no basis for your claim." was found to have satisfied Article V. (Award 16780, Third Division)

In this matter, the Carrier's denial is composed of two sentences. The first references the appeal of the Claimant's dismissal. The second denies the appeal. The letter does not contain a reason for denial nor does it invoke the Carrier's position by reference or review. The letter does nothing more than inform the Local Chairman the claim is denied.

Several awards were received on behalf of Carrier to the effect its liability is limited, and once a sufficient declination is made, thereafter the matter should be decided on the merits. We note authority for such findings occur in issues of a continuing nature. We do not read Article V, Paragraph (a) in that manner. Rather, we find Article V requires the claim is allowed as presented. Accordingly, the claim is allowed for lost wages, but not interest and other benefits sought. Allowance of this claim is done so with the understanding it 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:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1983.