

The Second Division consisted of the regular members and in addition Referee Joseph S. Cannavo when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Richmond, Fredericksburg and Potomac Railroad Company

STATEMENT OF CLAIM:

1. That the Richmond, Fredericksburg and Potomac Railroad Company violated the current agreement effective August 3, 1940 and reprinted January 1, 1978, in particular Rule 33, when its designated officer failed to disallow the claim on behalf of Electrician F. H. Dull, as stated in the claim letter dated March 14, 1989, and Carrier failed to allow the claim as presented as provided in said Rule 33.

2. Therefore, the Carrier should be ordered to allow the claim as presented due to its violations of Rule 33.

3. That the Richmond, Fredericksburg and Potomac Railroad Company arbitrarily and capriciously disciplined Electrician F. H. Dull eight (8) days actual suspension as a result of hearing held on January 11, 1989, and;

4. That the Richmond, Fredericksburg and Potomac Railroad Company expunge all mention of the arbitrary, unjust and capricious discipline from Electrician Dull's record; and,

5. That the Richmond, Fredericksburg and Potomac Railroad Company make Electrician Dull whole for any and all benefits and wages lost as a result of this unjust, arbitrary and capricious discipline.

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.

As a result of an Investigation held on January 11, 1989, the Claimant was assessed discipline consisting of eight days actual suspension. The Claimant was charged and found guilty of refusing duty and abandoning his assignment after having been instructed to stay on duty.

The essence of the Organization's claim in this appeal is that: 1) The Carrier failed to furnish written denial of its claim stating the reasons for that denial as required by Agreement Rule No. 33; and 2) that the Carrier did not meet its burden of proof in establishing that the Claimant was guilty as charged. Rule 33 states:

"(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"

In support of its position, the Organization notes that the Carrier responded to its initial claim and grievance by stating as follows:

"The proper appeal sequence for discipline that I have assessed is that appeals are to be directed to the Superintendent of Potomac Yard, Mr. John F. McGinley, and then to the Director of Labor Relations, Mr. W. E. Griffin, RF&P Railroad, Richmond, Virginia."

The Organization notes that the Carrier's representative neither stated the claim was disallowed or denied, nor did he submit any valid reason for not allowing the claim as presented to him. The Organization argues that Rule 33 requires the Carrier representative to disallow the claim or grievance within 60 days and so notify, in writing, whoever filed the claim or grievance of the reasons for such disallowance, and if such agreed-to notification is not made then the claim or grievance shall be allowed as presented. The Organization states that the Carrier violated Rule 33 by not only submitting insufficient reasons, but also by making no attempt to address the substantive issues presented to him in the Organization's initial claim. In response to the Organization's arguments, the Carrier submits that the response was complete in accordance with the longstanding established practice at Potomac Yard dealing with the sequence of handling claims and grievances. The Carrier does not dispute that the General Chairman initiated his claim with the Master Mechanic, who was the Carrier officer authorized to receive same. However, the Carrier argues that the long established practice at Potomac Yard is that when discipline is imposed by the Master Mechanic, then the established procedure is for the appeal to be made directly to the Superintendent. Carrier urges that the Claimant was in no way prejudiced by the fact that this appeal, under the practice at Potomac Yard, was directed to the Superintendent. In fact, the Carrier takes the position that this practice was established to expedite the handling of discipline cases. Carrier also asserts its right to designate officers to receive grievances and appeals under the Agreement. Carrier also notes that if the General Chairman took issue with the practice as set forth in the Master Mechanic's letter, he should have advised the Master Mechanic of his position. Instead, the Carrier notes that the General Chairman waited for sixty days to pass before writing to the Superintendent to

allege that the Carrier was in default of the time limit Rule. The Carrier submits that there was no procedural error in its handling of the Organization's appeal of the discipline assessed to the Claimant and that no provision in the Agreement precludes the Carrier from having a claim disallowed by a representative other than the officer who is authorized to receive the claim. The Carrier notes in directing the Organization's appeal to the Superintendent, the Master Mechanic did not wait until the eleventh hour to so divert the appeal and attempted to avoid multiple roles, as he assessed the discipline.

The essence of the Carrier's rebuttal to the Organization's argument is that there is a long-standing practice which permitted the Master Mechanic to inform the Organization to direct its appeal to the Superintendent. Other than stating this argument, the Carrier produced no evidence to establish: 1) that such a practice existed; or 2) if such a practice existed, the Organization had notice of it.

In Third Division Award 27692 reference was made to Fourth Division Award 4590 wherein the Board held:

"The Carrier should take strong note that the time limits issue raised by the Organization is a serious issue for this Board. As stated by the Board in Third Division Award 25856:

'The Carrier is cautioned ... that under the time limit Rules it is required to respond to Claims within the time limits specified even though it may consider the Claims involved as barred or otherwise defective.'"

As noted above, the Board has searched the record and found no substantiating evidence in support of the Carrier's contention regarding the long-standing practice that it relied upon, herein. Further, the Carrier made no allegation that there was an understanding between it and the Organization regarding an on-property modification of Rule 33.

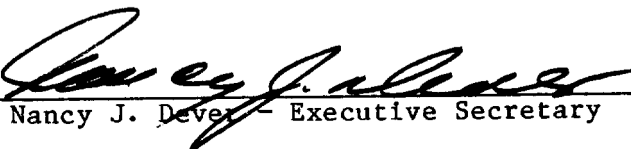
On the basis of the foregoing, the Board holds that the Carrier violated Rule 33 and sustains the claim on procedural grounds without reaching the merits.

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 16th day of October 1991.