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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6393
Docket No. 6198
2-SLSW-CM-' 72

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

Parties to Dispute: (System Federation No. 45, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(St. Louis Southwestern Railway Company

Dispute: Claim of Employees:

1. That under the current agreement Carman Welder Robert Gould, Jr., Pine Bluff, Arkansas, was unjustly dismissed from service effective October 29, 1970.
2. That accordingly the Carrier be ordered to restore Carman Welder Robert Gould, Jr., to service with seniority and vacation rights unimpaired.
3. That the Carrier be ordered to reimburse Carman Welder Robert Gould, Jr. for all time lost subsequent to October 29, 1970, until returned to service.
4. That the Carrier be ordered to pay his Hospital and Surgical and Medical Benefit and Life Insurance Premiums to which he was entitled under a negotiated Agreement, for all time that he is held out of service.
5. That in addition to monetary amounts claimed, he be allowed an additional amount of 6% per annum compounded annually on the anniversary date of the claim.

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.

Early in its processing of this claim on the property, Petitioner charged non-compliance by the Carrier with the requirements of Article V, Section (a) of the National Agreement of August 21, 1954, and that therefore the claim should be allowed as presented. This was and continues to be based upon the failure of the Carrier official with whom the grievance was initiated to specify a reason for his denial thereof.

The Carrier, in turn, moves for dismissal of the claim on the ground that it was the Petitioner which failed to fulfill the obligations of the controlling agreement between the parties as well as facets of Article V (a) and (b) of the National Agreement.

A careful review of the record discloses the following:

Claimant was given due notice that a formal investigation would take place with reference to his alleged improper conduct on August 20, 1970. A hearing was conducted by the Senior Car Foreman, duly designated for such by the Carrier. A stenographic report of the investigation was taken and copies thereof submitted to claimant and his Organization. On October 21, 1970, the Master Mechanic rendered a decision, in writing, dismissing claimant from Carrier's service and setting forth the reasons therefor. Approximately thirty days thereafter, the Local Chairman of claimant's Organization applied to the Senior Car Foreman for reinstatement of the claimant. The Senior Car Foreman is a lower Carrier official than the Master Mechanic who determined the penalty to be imposed upon claimant. The Senior Car Foreman rejected the grievance without specifying the ground therefore. The Petitioner then undertook to appeal the discharge to higher Carrier officers, citing this alleged procedural defect as its basis for seeking a reversal of the decision of the Master Mechanic.

Rule 22-1 of the controlling agreement specifies the manner in which a grievance shall be processed. Said Rule has been in agreements long predating the National Agreement of August 21, 1954. It is axiomatic that Article V of the National Agreement provided a means of improving grievance handling and was not intended to be a substitute for existing contract provisions dealing therewith. Its purpose was to expedite the process and avoid undue delays by either of the parties in moving claims forward to a proper conclusion. Although there was nothing improper in the application by the Local Chairman to the Senior Car Foreman for a review and an endeavor to have him seek reconsideration of the decision of his superior, this was not an appropriate appeal in accordance with the terms of Rule 22-1. The Senior Car Foreman was therefore not subject to meet any requirements of Article V of the 1954 National Agreement. The notice of termination, issued by the Master Mechanic, afforded sufficient explanation of the grounds for his decision. Claimant and Petitioner could not be in any doubt thereof and could not allege inability to appeal for lack of knowledge; the primary basis for the requirements of Article V. By applying to the Senior Car Foreman, the Organization took an unnecessary and useless step. Not too long after the August 21, 1954 National Agreement, we laid down the

the concept applicable hereto in Award 3280 (Carey) as follows:

"As noted, the charge, hearing and discipline of Eggert were handled by the Master Mechanic, who is an officer superior to the Round House foreman. In that procedure the carrier by-passed the Round House Foreman and thereby in effect waived its contractual requirement that this claim be initially presented to him. Under the circumstances, submission to the Round House foreman of the claim for reinstatement and payment for time lost, would have been an idle and useless act and was unnecessary. Since the Master Mechanic discharged Eggert, the proper step for seeking relief from the carrier's action was to appeal to the District Master Mechanic which was done by the claimant within the required time. We think the claimant satisfied the purpose and intent of Article V. ...

In Third Division Award 9492 (Rose), a further significant guideline was enunciated in the following manner:

"While we are reluctant to reach a decision on the basis of procedural defects rather than on the merits of a claim, we are bound to such a result, when as here, the parties, by the language of their agreement, have made compliance with procedural requirements mandatory."

In the instant matter, the record establishes that appeal from the October 29, 1970 decision of the Master Mechanic was not taken to the higher official "designated to handle such matters" until April 5, 1971, a period exceeding five months after claimant and his organization were duly noticed with the intent and purpose of Article V (a) of the 1954 National Agreement and the terms of Rule 22-1 of the controlling agreement. Our careful review of Awards cited in behalf of the Petitioner reveals that in none of them was there cited a provision such as we find in Rule 22-1 of the controlling agreement between the parties hereto. In said Rule, waiver or presentation of grievances and claims to lower echelon carrier officials when appeals are taken from a higher carrier official's decision, following a hearing at which a stenographic record is taken, is set forth.

The stress of the submissions was on procedural defects charged by both parties. As indicated above, we are generally loath to determine dispute on such grounds, but it is our statutory obligation to do so when such is properly placed before us. Our function is to enable parties to secure compliance with the terms they duly negotiated, agreed upon and codified.

Claimant and Petitioner's processing of this claim was not in accord with the controlling agreements and cannot be considered on the merits.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killian
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October, 1972.