

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 7104  
Docket No. 6771  
2-CMStP&P-MA-'76

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

Parties to Dispute: ( International Association of Machinists  
( and Aerospace Workers  
(  
(  
( Chicago, Milwaukee, St. Paul & Pacific Railroad Company

Dispute: Claim of Employees:

Claim of R. G. Sinkovic, Machinist Helper, Tacoma Roundhouse, for payment of all time lost while suspended from service from April 2 to April 13, 1974, inclusive; and payment of time lost while absent on account of injury on March 1, 2 and 5, 1973; for vacation rights unimpaired; for payment of premiums for hospital, surgical and medical benefits while held out of service; for payment of premiums for group life insurance while held out of service; and for restoration to service with seniority rights unimpaired.

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 the date of claim, claimant was employed as a Machinist Helper in the Tacoma, Washington Roundhouse. On March 12, 1973 he was charged with falsifying an injury allegedly incurred on March 5, 1973 and with failure to report said injury immediately as required by Safety Rule No. 1. Following a hearing held on March 13, 1973, claimant was adjudged guilty of the foregoing charges and was suspended for 10 working days.

The Organization has appealed Carrier's assessment of discipline arguing that claimant was not accorded a fair and impartial hearing as required by Rule 34(G), and further that the charges preferred against claimant were not proven by substantive evidence. Moreover, they aver that the discipline imposed on claimant was excessive.

The Carrier has maintained initially that in progressing the claim, the Organization has failed to comply with the provisions of Section 1(c) of Article V of the August 21, 1954 Agreement. They insist that Section 1(c) of Article V was violated when the Organization appealed the claim at the second step to the General Foreman when, in fact, the appeal should have been progressed to the District Master Mechanic. They also claim the Agreement was violated when the Locomotive Foreman was not notified in writing that his declination of the claim had been rejected.

Although this referee is reluctant to resolve grievances based on unduly technical reasoning, nevertheless when a clear violation of the procedure for handling claims as prescribed in Article V of the August 21, 1954 Agreement is shown to exist, we are left no alternative but to apply that Agreement. Section 1(c) thereof provides that claims or grievances must be appealed to the officer of the Carrier authorized to receive same within 60 days from receipt of disallowance. Carrier has exhibited a letter dated March 30, 1973 which allegedly was mailed to the Organization's General Chairman. That letter evidences that claims or grievances presented on second appeal were to be progressed to the Chief Mechanical Officer at Milwaukee, Wisconsin and not to the Superintendent of Motive Power as was formerly done. The Organization admittedly did not appeal the claim in the second instance to the Chief Mechanical Officer at Milwaukee. The Organization has not denied receiving the foregoing letter. And inasmuch as the claim was not appealed until June 5, 1973 the Organization certainly had sufficient time to comply with the March 30, 1973 instructions.

Since the Organization failed to appeal the claim to the officer of the Carrier authorized to receive same within 60 days from receipt of notice of disallowance, we are constrained to conclude that the provisions of Article V of the August 21, 1954 Agreement were thereby not complied with and the claim must be dismissed as a result.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 23rd day of July, 1976.