

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

Parties to Dispute: { Brotherhood Railway Carmen of the United States  
and Canada  
{ Southern Pacific Transportation Company

Dispute: Claim of Employes:

1. That the Southern Pacific Transportation Company (Texas and Louisiana Lines) violated the controlling agreement, particularly Rules 32 and 34, for the following reasons:
  - a) Unjustly dismissed Carman L. Dominguez from service on February 14, 1979, following investigation held on January 19, 1979;
  - b) Unjustly subjected Carman Dominguez to two (2) investigations - one held January 13, 1979, prior to Carman Dominguez being formally charged and the formal investigation held on January 19, 1979;
  - c) Multiplicity of roles of Assistant Superintendent C. E. Day;
  - d) Failure of Superintendent Tierney to make reply to Local Chairman's letter of appeal within the sixty (60) day time limit;
  - e) Assistant Terminal Superintendent Bulanek and Superintendent Tierney injected themselves into the case after it had been appealed to the highest designated officer.
2. That accordingly, the Southern Pacific Transportation Company (Texas and Louisiana Lines) be ordered to reinstate Carman Dominguez to service with all seniority rights unimpaired, vacation rights, all other benefits that are a condition of employment unimpaired, compensate him for all monetary losses retroactive to January 13, 1979, with 6% annual interest, until restored to service.

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.

This Board has carefully reviewed the appeals record and finds that the basic question before it is whether Carrier violated the controlling Agreement, particularly, Rule 32, when it failed to answer the Local Chairman's February 26, 1979 letter of appeal within the required sixty (60) days time limit.

Based upon this assessment, we find that Carrier violated Rule 32 when it failed to respond to the aforesaid letter within the Agreement's prescribed time limits, which, in this instance, included an additional thirty (30) days extension agreed to by the Organization on April 26, 1979. This extension, by definition, did not release Carrier from the liabilities that would accrue from noncompliance.

On the other hand, we cannot agree that the claim is payable for the total time during the claim period, when he was out of service, since he was incarcerated on March 4, 1979 for a serious felony offense and was plainly unavailable to perform work. He is entitled to be paid for the time February 14, 1979 through March 3, 1979, when despite being arrested on February 13, 1979 for another, though, lesser felony offense and then convicted and placed on three (3) years probation, he was physically available to perform work. We will award him back pay for this portion of the claim period for Carrier's failure to observe the time limit requirements of Rule 32.

A W A R D

Claim sustained to the extent expressed herein.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of October, 1981.