

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

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

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rule 32 of the controlling Agreement when they unjustly, arbitrarily and capriciously dismissed Carman D. M. Murray May 4, 1979, Omaha, Nebraska.
2. That the Missouri Pacific Railroad Company violated Rule 32 of the controlling Agreement when they failed to hold and act promptly on investigation of April 6, 1979 waiting until May 4, 1979 to issue discipline.
3. That the Missouri Pacific Railroad Company violated Rule 31 of the controlling Agreement when Superintendent R. L. McCoy failed to give any reason for declining claim of Local Chairman T. W. Jacobson of June 2, 1979 in his reply of June 8, 1979.
4. That the Missouri Pacific Railroad Company be ordered to compensate Carman D. M. Murray as follows:
 - (a) That Carman Murray be compensated for all wage loss from April 10, 1979 until he is returned to service.
 - (b) That Carman Murray be made whole for all vacation rights;
 - (c) That Carman Murray be made whole for all seniority rights;
 - (d) That Carman Murray be made whole for any covered insurance loss from April 10, 1979 until he is returned 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 claim arises out of disciplinary proceeding involving two investigations which resulted in the dismissal of Claimant for failing to protect his assignment on March 17, 1979, assuming the position of sleep on April 3, 1979, for being tardy April 3 and 6, 1979, and for falsifying time cards. The Board is initially presented with a procedural issue, which must be addressed prior to any review of the merits.

The Organization asserts Carrier violated Rule 32 and failed to hold and act promptly upon the April 6, 1979, investigation by waiting until May 4, 1979, to issue discipline. Carrier also is claimed to have violated Rule 31 by failing to give any reason for declining claim of local chairman.

The Claimant's first investigation was postponed from April 3 to April 6, 1979, at his request. A second investigation was held May 1, 1979, involving charges which occurred on April 3 and 6, 1979. Discipline was not issued after the April 6 hearing, but was specifically incorporated into the May 4, 1979, notice of dismissal. Review of these procedures convinces this Board that no substantial evidence exists to support charge that Carrier violated Rule 32 with respect to timeliness of hearing and issuance of discipline.

The letter from Carrier to Local Chairman declining the claim reads as follows:

"Reference your letter of May 17, 1979, requesting that the record of Carman D. M. Murray be cleared of the false charge brought against him by Trainmaster L. W. Lenzen and your letter of June 2, 1979, filing claim in behalf of Carman Murray for (a) compensation for all wage loss from April 10, 1979, until he is returned to service, (b) made whole for all vacation rights, (c) made whole for all seniority rights, and (d) made whole for any covered insurance loss from April 10, 1979, until he is returned to service.

After careful review of investigations, request for the above in behalf of Carman D. M. Murray is declined.

S/R L. McCoy, Superintendent"

The Organization holds that the last paragraph of the Superintendent's letter gives no reason for declining the claim. This Board has consistently ruled that no particular form or language is required in advancing reasons for or denying claims. In prior awards, the statement: "There is no basis for the claim and it is accordingly denied" has been deemed a sufficient reason for rejection. **Third** Division Awards 16576 (Engelstein) and 15726 (Mesigh). In this case, Carrier's denial referred to a review of the investigations, which are the basis for assessing discipline. Notwithstanding, this Board has reached a contrary conclusion where the answer does nothing more than state the claim is denied. Second Division Award 7371 (Franden) reviewed awards relating to such declinations and concluded:

"The letter from Carrier officer Needhan dated August 15, 1975 quoted above does nothing more than state that the claim is

declined. No reference is made to earlier denial letters of conferences, to the Carrier's position that no rule in the agreement has been violated, to a defense based upon the claim lacking basis or anything indicating whether the claim is being denied on the merits or on some procedural issue.

The provisions of Article V paragraph (a) have been rather liberally construed but we believe that to hold that the letter declining the claim in the instant case meets the requirements of that paragraph would in effect remove from the agreement the words 'notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance.'"

With benefit of this review, the Board finds the evidence in this case supports the conclusions that Carrier's letter of June 8, 1979, is proper and complies with Rule 32, thereby constituting sufficient disallowance of the claim.

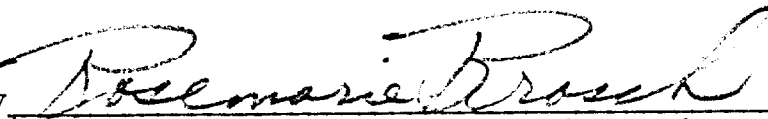
The burden of proof rests with the Carrier. Despite numerous arguments of unfairness and bias, we cannot find support of this defense in the record. Claimant did not deny he failed to protect his assignment on March 17, 1979, or that he was tardy on April 3, 1979. While there exists conflict over Claimant's falsification of time cards, sleeping, and being tardy on April 6, we are satisfied Carrier's resolution of this conflicting testimony was supported by a preponderance of the evidence. Claimant's denials are not credible. The Board will not disturb the conclusions reached or the discipline imposed.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 22nd day of July, 1982.