

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That under the current agreement the Consolidated Rail Corporation (Conrail) unjustly treated Electrician L. Mascioni on March 21, 1980.
2. That accordingly, the Consolidated Rail Corporation (Conrail) be ordered to make a complete investigation of the involved incident and discipline all persons found to have mistreated the aforementioned employee.

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.

Claimant was allegedly harrassed and abused by Conrail Police Officers at a little after 4 a.m. on March 21st, 1980 at the Brewster Engine Fueling Station. He filed an appeal within 10 calendar days requesting a complete investigation of the matter. His appeal was initially denied on the grounds that he had not been disciplined and therefore had no cause for complaint. The Organization appealed to the Senior Director-Labor Relations pointing out that preceding denials were unresponsive to the claim. It argued that under Rule 7-A-3 the Carrier is obligated to conduct an investigation with respect to an alleged injustice not involving discipline, and again requested that such investigation be made.

At the final step on the property (Senior Director-Labor Relations), a meeting was held at which the facts of the incident were reviewed and the Carrier concluded that the Policemen had acted properly and in accordance with established police procedure in handling a potentially dangerous situation. The claim was again denied, this time upon the basis of the factual review.

The Organization was not satisfied with this disposition and moved the claim to the Board for final adjustment requesting that an investigatory hearing be held where claimant with his Organization representatives would have the opportunity

to confront his alleged harrassers and that the Carrier discipline all persons found to have mistreated him.

The Carrier contends that the contract does not require a formal hearing and that it fulfilled its obligation to make an investigation and provided the substance of its findings to the Organization in the review of the facts at the June 11, 1981 meeting. Further the Carrier points out that the request that it discipline other employees not covered under the IBEW contract is totally improper, not having been raised on the property, and also not falling within the jurisdiction of the Board or within its proper remedy powers.

A number of prior cases were cited by both parties before the Board, with most disagreement centering around applicability of reasoning adopted in Third Division cases involving interpretation of (somehwat) similar Rule #46.

CONTROLLING LANGUAGE - Second Division Contract

Rule 7-A-3:

"When it is considered that an injustice has been done with respect to any matter other than discipline, the employee affected or the union representative ... on his behalf, may within ten (10) calendar days present the case, in writing, to the employee's General Foreman. If the decision of his General Foreman, which shall be in writing, is unsatisfactory, such decision may then be handled by the union representative with the Manager-Labor Relations." (emphasis added)

COMPARABLE LANGUAGE - Third Division Contract

Rule 46:

"An employee who considers himself unjustly treated, otherwise than covered by these rules, shall have the same right of hearing, appeal, and representation as provided in Rule 45, if written request which sets forth the employee's grievance is made to his immediate superior within 10 days of cause of complaint." (emphasis added)

The Board finds that the controlling contract language is clearly distinguishable from Division 3 language. The Third Division rule clearly requires hearing, appeal, and representation. The Second Division rule does not specify a hearing procedure, in fact it specifies that the case be presented in writing. Not only is the rule distinguishable from the Third Division contract in this regard, but it is also distinguishable from disciplinary appeals covered earlier in the same section (7-A-1) where the right of a hearing is clearly spelled out in (a) and (b).

While not entitled to a confrontational hearing under Rule 7-A-3, the claimant is, however, entitled to a written decision. It stands to reason that this decision be responsive to the claim asserted. The written answers from

both the General Foreman and the Manager-Labor Relations in this case were inadequate because the Carrier failed to appreciate the nature of the claim until it reached the Senior-Director level. The Senior Director's statement of July 1, 1981 indicates that a review of the facts led the Carrier to believe that no injustice had been done to claimant. Although this statement is at least responsive to the issue, a brief summary of the facts leading to this conclusion such as that given on page 2 of the Carrier's submission to the Board would be more in keeping with the spirit of the rule, particularly if claimant is not present at the meeting wherein results of the Carrier's review of the matter (i.e. unilateral investigation) are made known.

It seems reasonable that a claimant is entitled a written answer which incorporates at least some explanation as to why his claim is denied. Although this was done, the instant claim was initially denied for the wrong reasons and the Board finds that claimant should be provided with a revised answer incorporating the facts outlined on page 2 of the Carrier's submission.

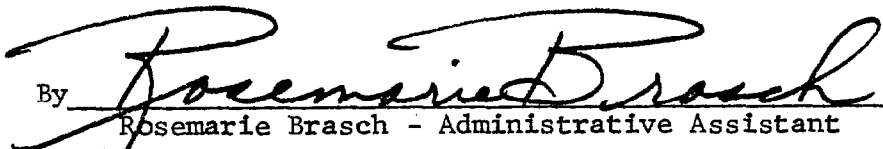
A W A R D

Claim disposed of in accordance with the Findings.

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 25th day of May, 1983.