

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(National Railroad Passenger Corporation

Dispute: Claim of Employes:

1. That the Carrier improperly suspended Machinist W. Howie (hereinafter referred to as Claimant) on October 31, 1981, and subsequently dismissed him on November 10, 1981.
2. That the Carrier be ordered to restore Claimant to service and compensate him for all wage loss from date of suspension to date of restoration to service.
2. That the Carrier violated handling procedures as set forth in Rule 24 (d).

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 employes 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 arose after the Carrier found the Claimant guilty to a charge that he had refused a direct order from one of its Foremen to work on a locomotive. The Carrier relied upon the testimony of its officials at the investigative hearing to arrive at its finding of a rule violation.

In its appeal, the Organization essentially contends that the Claimant did not refuse to comply with a direct order, since at the time he was in the process of discussing grievance procedures with co-workers. It provides extensive arguments and contentions to conclude that the testimony at the hearing was both confusing and contradictory and, therefore, does not lead to a substantive finding of guilt to the charges. Moreover, it also argues on procedural grounds, contending, among other things, that a violation of Rule 24 (d) has occurred "since your office did not reply to the appeal with the time limit as per agreement".

With respect to the procedural contentions of the Organization, the record shows that the Claimant was dismissed from the service effective November 11, 1981. The initial appeal, on both procedural and substantive grounds, was filed on December 4, 1981. The parties met in conference on December 18, 1981, during which the Claimant's dismissal was discussed. On January 7, 1982, the Carrier denied the claim. It followed that on February 4, 1982, the former General Chairman appealed the dismissal to the Director of Labor Relations of Amtrak. Letters of inquiry concerning the status of the case were sent by the Organization on April 14 and May 17, 1982, since no reply had been received to the February 4, 1982 letter. In its May 17 letter, the Organization raised the Rule 24(d) time limit issue previously cited. The next significant event occurred on June 30, 1982 at which time the parties held a conference to again discuss the claim under dispute. On July 22, 1982, the Organization sent a status inquiry letter, noting that it had not received a decision to its appeal as a result of the June 30, 1982 conference, although almost a month had passed. At this time, it reiterated its earlier position with respect to the Rule 24(d) time limit contention.

On July 29, 1982, the Carrier again denied the claim on both substantive and procedural grounds. On the latter, it contended that Rule 24(d) required that an appeal decision must be rendered within 30 calendar days of a conference. It argued that the Rule does not obligate the Carrier to answer a claim within 30 days of the appeal, as contended by the Organization.

Certainly, under reasonable standards, the Organization had a right to expect an earlier reply to its appeal of February 4, 1982. Moreover, the Rule does require "a conference on the appeal". However, the Rule is silent with respect to the parties' responsibility to schedule a conference. The Carrier contends, and provides substance to its contention, that it had been the practice of the parties to hold an appeal in abeyance pending a conference to be scheduled at a mutually agreeable time and date, in essence, contending that it is a shared responsibility, with respect to the scheduling of the conference. Therefore, the argument flows that the 30-day time limit does not begin until the conference is held. Accordingly, while we do not condone the Carrier's laxness in responding to the appeal and, after full consideration of the Organization's well-stated argument in the record and before the Board, we do not find a procedural violation, given the relevant facts and circumstances, herein.

Concerning the substances of the charge, three officials essentially testified that the Claimant refused a direct order of his Supervisor. Moreover, the Claimant acknowledged that he refused a direct order. While perhaps the Claimant's Supervisor might have been more sympathetic to the Claimant's desire to be helpful to his co-workers, the Supervisor's actions are not shown as unreasonable ones. The Claimant has a basic responsibility to respond to a legitimate order. In the incident here, after first being asked to do the work, he refused; he then had other opportunities to comply, he still refused. By so doing, he placed himself at peril to the consequences of his actions.

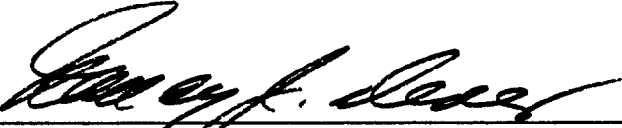
Form 1
Page 3

Award No. 10290
Docket No. 10142
2-NRPC-MA-'85

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1985.