

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: (Randy Speight
(The Washington Terminal Company

Dispute: Claim of Employes:

A false claim of misconduct was brought against the employee by supervisory officials of the carrier. The union represented him, and gave him advice. The union representative did not make the minimally essential (sic) preparations for the hearing, and did not advise employee as to what to expect or do. In other cases, the union, where employees are white, informs the employee in advance as to how to prepare and face an (sic) hearing. As a result of the failure of fair representation by the union, employee was discharged by carrier. Carrier failed to demonstrate that any violation occurred.

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 were given due notice of hearing thereon.

Carrier exercised its right of appearance at hearing thereon.

At 10:30 p.m. on October 10, 1981, two Supervisors observed the Claimant, Randy Speight, sleeping on Car 882 at the station. As a result of the above observation, Claimant was ordered to report for a hearing on October 23, 1981, to answer the following charge:

Violation of Washington Terminal General Rule N which reads in pertinent part: "Participating in any unauthorized or unnecessary activity, while on Company property is prohibited". When on October 10, 1981, about 10:35 p.m., two members of supervision observed your sleeping on Car 882, Seat 63, in Track 17 at the Station.

The hearing was held on November 6, 1981. On November 19, 1981, as a result of the evidence produced at the hearing, Claimant was found guilty as charged and was dismissed from Carrier's service.

On January 4, 1982, the Organization appealed the discipline to Carrier's President, R. A. Herman, the highest designated officer to hear such matters.

The appeal was heard on February 11, 1982. On March 15, 1982, President Herman denied the appeal. On August 4, 1982, the General Chairman advised Claimant that his case was found not to contain sufficient merit for further handling to a Board of Adjustment. The Claimant was also informed in the August 4, 1982, letter that he could file the case with the National Railroad Adjustment Board himself if he did so by December 15, 1982.

On April 25, 1983, more than nine months from the Carrier's decision, the Claimant progressed his case to this Board.

The Claimant's position is that the Board has jurisdiction to consider this claim because, although Claimant did not institute proceedings before this Board until April 25, 1983, Claimant communicated with the Board by letter on December 15, 1982, attempting to secure an extension of contractual time limits.

The record reflects that Claimant was duly notified through his attorney of a Hearing before the Second Division for January 15, 1985. Claimant was unavailable and the Hearing was postponed to February 14, 1985. Claimant advised the Board by telegram that he would not attend the rescheduled Hearing.

The Carrier's position is that the claim is barred because the claim was not progressed to this Board until April 25, 1983, more than nine months from the date of the Carrier's decision in this case, which was on March 15, 1982. The Carrier relies on paragraph (c) of Article V of the August 21, 1954, Agreement, which reads as follows:

"(c) ...All claim or grievances involved in a decision by the highest designated officer shall be barred unless within nine months from the date of said officer's decision proceedings are instituted by the employee or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the nine months' period herein referred to."

The Carrier states that no extension of the nine-month period was ever requested by the Claimant or the Organization.

The Carrier further contends that the Claimant was correctly found guilty as charged.

After reviewing the record, this Board finds that the claim must be denied on procedural grounds. Paragraph (c) of Article V above makes it absolutely clear that Claimant's claim should have been filed by December 15, 1982. The claim was not filed until April 25, 1983. Therefore, this claim must be denied. Having denied the claim on procedural grounds, it is unnecessary for this Board to discuss the substantive issues involved in this case. (See Second Division Awards 6853 and 6601.)

Form 1
Page 3

Award No. 10384
Docket No. 10213-I
2-WT-I-CM-'85

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of April 1985.