

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11999
Docket No. 11745
91-2-89-2-25

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

1. That in violation of the governing Agreement the Burlington Northern Railroad Company arbitrarily refused to allow Communications Department Electronic Technician Donald J. LaFavor to return to service from a leave of absence. The arbitrary action of Burlington Northern deprived Mr. LaFavor of his right to wages and overtime available to him, in addition to travel and moving expenses that were due him.

2. That in further violation of the Agreement, the Burlington Northern Railroad did not reply to Mr. LaFavor's claim within the time limit specific by the governing rule of the current Agreement. The claim must, therefore be allowed as presented.

3. Accordingly, the Burlington Northern Railroad should be instructed to compensate Electronic Technician Donald J. LaFavor in the amount of \$10,771.78 for lost wages and overtime plus penalties, travel and moving expenses provided by the Agreement.

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.

On January 30, 1987, Claimant was involved in an alleged incident of insubordination. He was given a notice to attend an Investigation dated February 2, 1987. The Investigation was not held until June 2, 1987, having been postponed for a variety of reasons, not the least among them the fact that Claimant was on medical leave during part of this time at the insistence of his personal Doctor. On June 19, 1987, Claimant was notified that he was being disciplined with a thirty day suspension to run through July 23, 1987. On July 24, 1987, Claimant returned to service.

On July 1, 1987, Claimant, on his own behalf, wrote Carrier's Communications Supervisor seeking lost wages, travel and moving expenses, retroactive for a 60 day period, because Carrier had held him out of service unjustly and without good cause. At the time a copy of this letter was furnished his Organization.

On July 22, 1987, Claimant's Local Chairman filed a fourteen page Claim on his behalf. The opening paragraph of this letter stated:

"Claim to begin on date of January 30, 1987, and is for eight (8) hours compensation at the pro rata rate for each day of lost time, with all rights and benefits under Agreement or law reimbursed, and is to continue until adjusted."

The remainder of the lengthy letter reviewed previous handling given the matter since January 30, 1987 and highlighted developments in the Investigation transcript.

On July 28, 1987, Carrier responded to the July 22, 1987, letter from the Local Chairman, stating:

"Mr. LaFavor's leave of absence was totally at the request of Mr. LaFavor or his personal physician. Any claim for lost wages for that time period is completely without merit.

Claim denied account violation of Rules 563, 564 and 570 by D. J. LaFavor as proven in investigation 87-14."

This denial was appealed on the property without settlement and was eventually appealed to this Board where the contentions of the Organization were dismissed and the Claim was denied in our Award 11773, dated October 4, 1989.

While the Organization was pursuing the Claim disposed of in our Award 11773, Claimant contended, in letter dated September 29, 1987, that the letter he had filed on July 1, 1987 had never been acknowledged. Accordingly, he contended, the "claim" therein stood to now be allowed as presented by reason of the application of Rule 29, the Time Limits on Claims Rule. It is this contention which is the subject of the dispute now before this Board in this Docket.

It is obvious that all essential ingredients giving rise to the subject dealt with in Claimant's July 1, 1987 letter and the Claim filed in his behalf by the Organization in its July 22, 1987 letter are the same. It is also obvious that the relief, with but minor semantic differences, requested in the two letters, was similar. Claimant's letter, standing alone might, if it were adjudged to be a Claim, require a timely answer under the parties Time Limit Rule. However, because Claimant was also having his Organization handle the matter at the same time, its subsequent timely filing must be considered an amendment or supplement to his letter. By any measure duplication was occurring. One timely denial of the Claim would seem sufficient, as only one, but complicated, single grievance existed.

Within the period of time in which Carrier had to make a response to Claimant's letter, (if it were adjudged to be a claim), a lengthy, more detailed appeal was received from Claimant's Organization - an Organization which extensively handled all facets of a complex matter with Carrier Representatives between the date of the incident, January 30, 1987 and the date of the Letter of Discipline, June 24, 1987. The Organization's July 22, 1987 letter, which its length alone would suggest took considerable time and thought to prepare, can only be considered as a continuation of the handling the Organization had been giving the matter, prior to the Investigation, at the initial Investigation, at the postponed Investigation and in the post Investigation period. The letter must also be considered as an amendment to the points raised in Claimant's July 1, 1987 letter and the relief sought.

The Organization was officially authorized by Claimant to handle this matter. He did so on the record at his initial Investigation and he did so again when the postponed Investigation was resumed. There is no record available that the Organization was not so charged between the date the discipline was assessed and the date of its Claim letter, July 22, 1987. In these circumstances Claimant's July 1, 1987 communication cannot be considered a separate "claim" from that of July 22, 1987, as it was but preliminary and abbreviated duplication of the efforts of the Organization because the language of Rule 29 does not contemplate duplicate claims or grievances on a single matter.

The language of the Rule specifically indicates that:

"All claims or grievances must be presented in
writing by or on behalf of the employee involved
...."

If duplicate claims are allowed on the same grievance then the Rule would have to be read as "by and on behalf." "Or" and "and" are different and this difference must be recognized here.

This Board has held in the past that progression of duplicate claims covering the same subject is inconsistent with the Railway Labor Act, and, such must be dismissed. (See Third Division Awards 19966, 20455, 20714, 20586 and Fourth Division Award 4590.)

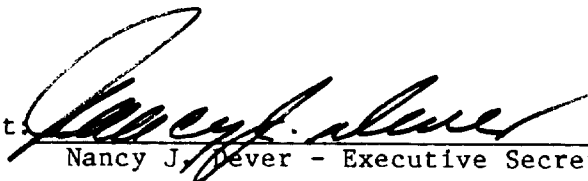
The merits of the matter have been given final and binding adjudication in Award 11773 of this Division. We are without a basis, under the Railway Labor Act, to modify, overturn or affirm, indeed for that matter even review, Award 11773, which we would constructively be doing if we did anything but enter a dismissal Award here.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of February 1991.