

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, that:

(1) The Carrier violated the agreement when it failed to render a decision within ten (10) days after completion of an investigation of charges placed against Section Laborer C. J. Horner;

(2) The Carrier further violated the agreement when it entered into an individual agreement with Section Laborer C. J. Horner setting forth the conditions under which Section Laborer C. J. Horner would be restored to service, without seeking or securing the approval and concurrence of the duly designated representative of all the employees covered by the effective collective bargaining agreement;

(3) The Carrier be required to compensate Section Laborer C. J. Horner for all wages lost while out of service, with full seniority, vacation and other rights unimpaired;

(4) Section Laborer C. J. Horner's record be cleared of any unfavorable entry made thereon arising out of the investigation held on July 29, 1952, and out of the Carrier's individual agreement with Section Laborer C. J. Horner as referred to in part (2) of this claim.

OPINION OF BOARD: The claim that the Carrier violated the Agreement by failure to render a decision within ten days after completion of the investigation cannot be sustained, because within such ten days the Carrier and the employee entered into an agreement whereby in consideration of his promise not to repeat his offense he was reinstated without pay for lost time. An admission of guilt eliminates the necessity for a decision as to guilt or innocence, so that agreement obviated the necessity for a decision under Rule 53.

The claim that the Carrier violated the Agreement by entering into that individual agreement without obtaining the approval of the designated collective bargaining representative is invalid, because the rules do not require such approval.

Some decisions are cited which hold that individual agreements inconsistent with the collective Agreement are invalid. This agreement is not inconsistent with the collective Agreement but instead is consistent with and contemplated by Rule 56.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of June, 1955.