

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis B. Murphy, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Minneapolis, St. Paul and Sault Ste. Marie Railroad Company that:

(a) The action of the Carrier in refusing to grant Signal Foreman J. F. Mason an extension of leave of absence while sick and under a physician's care, and the subsequent action of the Carrier in dismissing Signal Foreman J. F. Mason following an alleged impartial formal hearing, was of a capricious and arbitrary nature, in abuse of its discretion, and in violation of the current Signalmen's Agreement.

(b) The Carrier now restore Signal Foreman J. F. Mason with full seniority and other rights unimpaired and compensate him for each day at his respective Signal Foreman's rate of pay that he has been improperly held from work as a result of this unwarranted and unjust action taken by the Carrier.

OPINION OF BOARD: This Board has consistently protected the right and obligation of the Carrier to select their employes as well as to discipline them even to the extent of discharge, providing, they have exercised such rights without any violation of its written agreement with its several organizations representing their employes.

The Carrier and the Organization entered into agreement and in Article 7, Rule 56, defines the pertinent agreement and rules governing Discipline and Grievances.

The benefits of Article 7, Rule 56, are agreed to without restriction wherein they state:

"An employe who has been in service sixty (60) days or more will not be disciplined or dismissed without an impartial hearing."

Although the Organization and Representative failed to properly represent the Claimant in attempting to obtain an extension of his leave of absence while he was committed to the care of Dr. Peter Bell, M. D., Chief of the Psychiatric Services, Division of Correction, State of Wisconsin, until the time had expired for appeal to the Carrier's decision is no defense in this action because the Carrier had the obligation to live up to its agreement and see that the employee was given "an impartial hearing".

Regardless of how low or immoral the violation of Rule 702 may have been for this Board to consider this case on a meritorious basis all of the rules in the agreement must have been carried out.

The Board feels that in view of the Claimant's request for a ninety (90) day leave and the Carrier's reply to the effect that:

"Under Rule 41(a) of the Signalmen's agreement, no leave of absence is required until after the expiration of six months, at which time it will be necessary to request a leave of absence."

and at the end of the six month period, the Carrier's request for physician's statement which was furnished "before a determination of your request can be made" for a ninety (90) day leave of absence due to sickness, certainly was notice to the Carrier that Mr. Mason was a patient and it would be impossible for him to attend a hearing.

The Carrier would have waived none of their rights by waiting until Mr. Mason was discharged from the hospital as requested, the Carrier could then have given a Notice and hearing for Mason's violation of Rule 702 and this Board would have been able to decide this case on its merit, and would have supported the Carrier in such a violation.

Although it is apparent that a very substantial right under the agreement was denied to this Claimant, we are unable to justify a claim "that he has been improperly held from work". In fact his own misdeed was the reason for his confinement as stated by Dr. Bell when he said that he considered "him mentally ill as a result of the mental conflicts which exist".

For these reasons the Board rules:

(a) That the action of the Carrier in refusing Signal Foreman J. F. Mason an extension of leave of absence while sick and under a physician's care was in violation of the agreement.

(b) The Carrier restore Signal Foreman J. F. Mason with full seniority and other rights unimpaired, but with no pay for time lost.

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 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

That Claimant be restored promptly to service with full seniority and other rights unimpaired, but with no pay for time lost.

AWARD

Claimant be restored promptly to service with full seniority and other rights unimpaired, but with no pay for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 18th day of June, 1959.