

Award No. 10952
Docket No. SG-12423

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roy R. Ray, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Milwaukee, St. Paul and Pacific Railroad Company:

That E. L. Johnson be restored to his former position as Signal Maintainer, Twin City Terminals, with all seniority rights and privileges and vacation rights unimpaired, and that he be reimbursed for all time lost and expenses incurred as a result of his being dismissed from service by letter of September 2, 1959.

[Carrier's File — Case: F-1031]

OPINION OF BOARD: On August 25, 1959, Claimant Eldon L. Johnson, while working as a Signal Maintainer, had an accident with his motor car. On September 3, 1959 he was released from service, being charged with violation of certain safety rules. Claimant requested an investigation which was held on September 14, 1959. On September 24, 1959 Claimant was dismissed from Carrier's service. He appealed the matter through the various stages and his appeal was denied at all steps on the ground that he had not complied with the prescribed procedure; the denial by the highest officer of the Carrier, designated to handle appeals, coming on November 4, 1959.

While Claimant was processing his appeal under Rules 70-74, and several days before his final appeal was denied, the Organization, through its General Chairman, on October 28, 1959, filed on behalf of Claimant the claim which is the subject matter of the present docket, (SG-12423). Despite this, Claimant, on March 14, 1960, through an attorney, submitted his own claim to this Board. (Docket MS-11741). On November 2, 1960 the Board in Award 9623 dismissed the claim with the brief statement:

"The record in this docket shows that the claim stated here was not handled in the usual manner as provided in Section 3, First (i) of the Railway Labor Act, as amended; therefore the claim will be dismissed."

While Johnson was in the process of submitting his claim to the Board and after it was submitted the Organization continued to process its case in his behalf for reinstatement and pay for time lost. It was handled through the various stages and finally denied by the highest Carrier officer designated to handle such matters on May 16, 1960. Upon receiving a denial by the top officer, and after Award 9623 had been rendered, the Organization submitted to the Board the Claim contained in the present docket.

At the outset the Carrier challenges the authority of this Board to consider the present docket, asserting that the claim represented thereby is barred from further consideration by Award 9623 under the provisions of Section 3, First (M) of the Railway Labor Act, which says in part: "the awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award. In case a dispute arises involving the interpretation of the award the Division of the Board upon request of either party shall interpret the award in the light of the dispute."

The Carrier also asserts that the present claim is barred by the failure of the Claimant to furnish the Superintendent, the officer who made the dismissal decision, a copy of the letter requesting an appeal hearing as required by Rule 70(b).

Carrier's first objection goes to the jurisdiction of the Board. It asserts that the claim in the present case is the same dispute which Claimant, through his attorney, processed to this Board and that Award 9623 dismissing his claim is final and binding upon him and therefore a bar to the present claim processed by the Organization on his behalf. The "final and binding" language of Section 3 First (M) has been interpreted by the courts and by various Divisions of the Adjustment Board. It now appears to be settled that the first award on the same claim or dispute is final and binding on the parties whether made on the merits or on a procedural point. Awards 6935 Coffey, 9377 Stone, 10516 Miller and Fourth Division Award 993 Ferguson.

The Organization suggests that this is not the same case as that previously before the Board; that the moving party here is the Brotherhood of Railroad Signalmen, whereas in the prior case it was Claimant Johnson, represented by his attorney. The answer to this is that while the formal party here is the Brotherhood of Railroad Signalmen we must look to substance rather than form. It is the identity of dispute which governs in the "final and binding" rule rather than the nature of Claimant's representation. In the earlier case (Award 9623) Claimant proceeded on his own through an attorney before the Board where the Award went against him, apparently on a procedural point. Under the Act, he is not entitled to a second hearing with different representation.

While the Board is reluctant to dispose of a case on some basis other than the merits, under the law it has no alternative other than to dismiss the present case on the ground that it is barred by Award 9623.

Having found that the case is barred by Award 9623 we do not pass upon Carrier's contention with respect to Rule 70(b).

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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

That the claim is barred.

AWARD

Claim dismissed for want of jurisdiction.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of December 1962.