

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOO LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Soo Line Railroad Company:

In behalf of Mr. J. F. Mason for vacation pay in the amount of \$233.80 for vacation earned in 1956, but not received by Mr. Mason. In accordance with Article V of the August 21, 1954, National Agreement this claim is now payable as presented, as the Carrier failed to disallow the claim within sixty (60) days after it was presented to Mr. B. F. McGowan, Superintendent of Signals, by General Chairman R. P. Hodsdon on October 31, 1959. [Carrier's File No. 900-54-78]

EMPLOYEES' STATEMENT OF FACTS: Signal Foreman J. F. Mason, the claimant in this dispute, was dismissed from the service of this Carrier on May 13, 1957. As a result of the Carrier's action in dismissing Signal Foreman Mason, an appeal was made to the National Railroad Adjustment Board, Third Division, the Statement of Claim reading as follows:

"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 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 had been improperly held from work as a result of this unwarranted and unjust action taken by the Carrier."

denied any pay for time lost, but that Mr. Mason's claim for vacation or allowance in lieu thereof was barred from consideration account not filed within the time limits prescribed in the rules.

General Chairman Hodsdon appealed the claim to the Manager of Personnel and Safety on July 28, 1960, and on September 23, 1960, the appeal was denied. Without seeking conference on the dispute, the General Chairman on November 1, 1960, advised that he was referring the matter to the Grand Lodge for further handling.

Exhibits of the correspondence referred to are attached hereto and made a part of the record. All data submitted in support of the Carrier's position has been presented to the General Chairman of the Brotherhood of Railroad Signalmen.

(Exhibits not reproduced.)

OPINION OF BOARD: It is the position of Carrier that this Board should not consider this claim on its merits since it was not discussed in conference on the property as required by the Railway Labor Act. In Carrier's initial submission to this Board there appears the assertion:

"Without seeking conference on this dispute the General Chairman, on November 1, 1960, advised that he was referring the matter to the Grand Lodge for further handling."

A search of Petitioner's rebuttal submission reveals that there is neither any denial of nor any reference made to this Carrier statement. The silence of Petitioner is a tacit admission that Carrier's statement is true and that no conference was either held or requested on the property.

As is stated in Award 11896:

"The question raised by the Carrier has been discussed in prior awards of this Board. The Federal Courts have held that the Railroad Adjustment Board has no authority to adjudicate a dispute unless the statutory requirements of the Railway Labor Act are complied with which unconditionally impose upon all Carrier and Employee representatives legal duty to hold a conference in connection with each dispute that they are unable to settle by other means."

See also Award 15148 (Hall).

Further in Award 13097 it is stated:

"The Organization is the moving party before this Board. If the Petitioner wants to invoke the action and assistance of this Board in adjusting a dispute between the Petitioner and the Carrier, Petitioner must demonstrate that every effort to settle this claim has been exhausted on the property and that includes the requirement of the Railway Labor Act that a conference be held between the parties."

For the foregoing reasons the claim must be dismissed.

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

Employes failed to confer or attempt to confer with Carrier on the property regarding this dispute.

AWARD

Claim dismissed.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of February 1967.