



Award No. 15554
Docket No. MW-15345

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
NORFOLK SOUTHERN RAILWAY COMPANY**

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

(1) The Carrier violated the Agreement when, on March 26, 1964, it dismissed B&B Foreman J. R. Buckner without just and sufficient cause and on the basis of charges which were not proven at a hearing held on April 9, 1964, conducted by an officer who, unknown to the Employees, had already prejudged the claimant guilty.

(2) The Carrier's Chief Engineer failed to comply with the procedural requirements outlined in paragraph 1(a) of Article V of the August 21, 1954 Agreement in his handling of the claim which was presented to him on April 20, 1964.

(3) B&B Foreman J. R. Buckner now be reimbursed for all wage loss suffered as a result of the aforesaid violations.

EMPLOYEES' STATEMENT OF FACTS: Prior to his "removal" from the Carrier's service on March 26, 1964, the claimant was the regularly assigned foreman of a B&B gang assigned to Area No. 31101. He had served the Carrier as a B&B foreman for a period of approximately 14 years. He had never previously been disciplined by the Carrier.

On March 26, 1964, the claimant's gang was engaged in the work of installing bridge ties at Broad Creek Trestle. In order to install a sufficient number of ties to insure the safe passage of trains, the gang did not commence their lunch period at the customary time, but waited until approximately 1:10 P. M. (after the gang had installed 124 ties).

In order to obtain further instructions from his supervisor, the claimant had left the gang to travel to Carolina Junction, where he could telephone his supervisor. Before leaving, he instructed two of the carpenters as to the work to be performed during his absence. Two members of the claimant's gang transported him to Euclid by motor car and they returned to the work location. The remainder of the trip the claimant made in his automobile. Four members of the claimant's gang remained at the work location during their lunch period.

Foreman Buckner from the service with letter dated Norfolk, Virginia, March 26, 1964, a copy of which is attached hereto as Exhibit B. On April 1, 1964, General Chairman C. L. Winstead wrote to Bridge and Building Supervisor John McIver, requesting a hearing, and copy of this letter is attached as Exhibit C. Chief Engineer J. A. White, Jr. answered General Chairman Winstead's letter on April 3, 1964, setting up hearing for 9:00 A. M., April 9, 1964. A copy of Mr. White's letter is attached as Exhibit D.

Hearing was held as scheduled and before same could be transcribed and printed, General Chairman C. L. Winstead presented claim in behalf of Foreman Buckner to Chief Engineer J. A. White, Jr., said claim being dated April 20, 1964, and a copy is attached hereto as Exhibit E. This claim was presented before General Chairman Winstead had benefit of transcript of hearing and before decision of Assistant Chief Engineer J. B. Davis, Jr. was rendered. As Chief Engineer J. A. White, Jr. was a witness to the incident, his assistant, J. B. Davis, Jr., conducted the hearing and rendered the decision of April 24, 1964, at which time he directed a letter to General Chairman Winstead with a copy to Mr. J. R. Buckner and Division Chairman R. B. Sauls, as per copy attached as Exhibit F. Nothing further was heard from this until June 25, 1964, when General Chairman C. L. Winstead by letter of June 23, 1964, copy attached as Exhibit G, notified Chief Engineer J. A. White, Jr. that inasmuch as he had not answered his (Winstead's) letter of April 20, 1964, the claim was being appealed to Mr. J. M. Godwin, Director of Labor Relations. At that time, June 23, 1964, B&B Foreman J. R. Buckner had been restored to service for twenty-three days and, therefore, that part of the original claim had been fulfilled. However, in spite of this, General Chairman Winstead did appeal the claim in its entirety to Carrier's Director of Labor Relations on June 23, 1964, without giving the Chief Engineer, Mr. J. A. White, Jr., an opportunity to negotiate the matter. A copy of Mr. White's letter of June 26, 1964 and Mr. Winstead's reply of June 29, 1964, are attached as Exhibits H and I.

The Carrier by its Director of Labor Relations advised the General Chairman of the Brotherhood of Maintenance of Way Employees on July 3, 1964, of its faulty procedure in the handling of this claim. Letter of July 3, 1964 is attached as Exhibit J. General Chairman Winstead responded with his letter of July 7, 1964, copy attached as Exhibit K. This claim was discussed in conference in Carrier's office at Raleigh, North Carolina, July 20, 1964, at which time Vice President J. H. Hadley and General Chairman Winstead were advised verbally that the Carrier still maintained the position outlined in its Director of Labor Relations' letter of July 3, 1964, that this claim was without standing because of the failure of the Brotherhood to comply with Sections 1(b) and 1(c) of Article V of the Agreement of February 9, 1955. The Carrier's position was confirmed in letter of July 22, 1964 to General Chairman Winstead, as per copy attached as Exhibit L.

(Exhibits not reproduced.)

OPINION OF BOARD: On March 26, 1964, Foreman J. R. Buckner was advised in a letter that he was dismissed from service because he permitted his men to be idle and without supervision and instruction as to their duties while he was engaged in other activities.

In a letter dated April 1, 1964, the General Chairman in behalf of Mr. Buckner requested that he be granted a hearing in accordance with Article 4 of the Agreement. This hearing was held on April 9, 1964, but before that

date, on April 2, 1964, Carrier issued a bulletin advertising the position from which he had been dismissed. The position was filled on April 16, 1964.

Before the decision of the hearing was rendered, the Brotherhood filed a claim on April 20, 1964, charging that Mr. Buckner was removed from service without just and sufficient cause, that the hearing was conducted by an officer who had already prejudged him, and that Carrier's action in filling the position from which he had been removed was arbitrary prejudgment because he was not given an opportunity to disprove the charges preferred against him.

On April 24, 1964, the decision of the hearing provided for Mr. Buckner's return to service June 1, 1964, with his seniority rights restored.

On behalf of Mr. Buckner the Brotherhood contends that he is entitled to reimbursement for the wage loss suffered during the period he was removed from service on the merits of his case and also because of Carrier's failure to comply with the procedural requirements in paragraph 1(a) of Article V of the National Agreement.

Carrier asserts that Mr. Buckner received a fair and impartial hearing and that his return to service was in accordance with the findings of the hearing. Furthermore, it declares that Brotherhood failed to appeal after it received a letter outlining the results of the hearing and hence this party did not comply with Article V of the National Agreement.

With respect to the contention that Carrier failed to respond to the claim of Organization filed on April 20, 1964, we find that Mr. Buckner and the General Chairman received a letter dated April 24, 1964, stating the outcome of the hearing and the reasons upon which the decision was based. This letter constituted a reply to the claim within the sixty days provided for in Article V, and, therefore, Organization's contention on procedural grounds is rejected.

The record also includes correspondence between the parties which arose from the decision of the hearing on April 24, 1964. From these letters we conclude that Organization appealed the decision of the hearing within the proper time limits; hence, we also reject Carrier's request to dismiss the claim.

In examining the proceedings of the hearing, and the conduct of the hearing officer, we find that they were fair and impartial. There is no evidence that the advertisement of the Foreman position before the hearing began had a prejudicial effect on the conduct of the hearing and resulted in a decision that was unjust and unreasonable. The findings permitted Mr. Buckner to return to his position with seniority and vacation rights restored.

Since the Agreement was not violated, the claim is denied.

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 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

That the Agreement was not violated.

AWARD

Claim denied.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of May 1967.