



Award No. 15856
Docket No. CL-16034

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

SOUTHERN RAILWAY COMPANY

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

(a) Carrier violated the Agreement when it suspended Mr. H. T. Brewer, Yard Clerk, Memphis, Tennessee, from the service of the Southern Railway Company effective June 29, 1964, charged "with allowing WFCX 8101, to move out of Mid-South Refrigerated Warehouse as an empty on Train No. 50, June 6, 1964."

(b) Mr. H. T. Brewer shall be compensated for the amount of \$454.50, which is the total compensation due him while he was unjustly held out of service.

(c) Mr. Brewer shall have the record of this suspension removed from his personal records.

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the *Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees*, as the representative of the class or craft of employees in which the claimant in this case holds position, and the Southern Railway Company.

Mr. H. T. Brewer had a Group 1 seniority date of October 14, 1948. He is regularly assigned as Yard Clerk at Memphis, Tennessee. His total service dated back to July 7, 1947.

Mr. Brewer was suspended from the service of the Southern Railway Company from June 29 until July 29, 1964.

Local Chairman, Mr. Frank P. McCollum, filed the initial claim in this case on July 29, 1964, Employees' Exhibit A, and stated:

"This is a claim in behalf of H. T. Brewer, Yard Clerk, for payment of salary during suspension of duties resulting from investigation dated June 15, 1964. A copy of which accompanies this letter.

charged. In these circumstances, the discipline assessed was fully justified and commensurate; there is no basis for the claim, and it is respectfully declined."

The case was discussed by the parties in conference on October 21, at which time the investigation was reviewed and carrier's previous decision was reaffirmed.

* * * * *

Rule 40 of the effective Clerks' Agreement of October 1, 1938, revised as of June 1, 1952, reads as follows:

"RULE 40.
DISCIPLINE AND GRIEVANCES
(Revised, effective October 1, 1938)

(a) Employees will not be discharged or disciplined except for cause. If request is made therefor within five days, an investigation shall be held. Investigation will be made by the proper officer within five days after date of request, if possible, and in their presence. They will have the privilege of bringing to such investigation one or more employees of their own selection to act as representatives, provided such employees are in good standing on their seniority district. Pending investigation, employees may be relieved from service. If found blameless, they will be paid for lost time. If employee receives remuneration for services from Company and others during suspension or dismissal, only actual amount lost will be paid. If discharged or demerited, they will, upon written request, be furnished with a written statement giving cause.

(b) *Employees feeling an injustice has been done them, or having a grievance, may always submit their case to their superior officer for consideration and review, and shall have the privilege of appealing to the next ranking officer, provided such appeal is made in within thirty (30) days after the reviewing officer has rendered his decision.*" (Emphasis ours.)

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant in this case was charged with permitting Car WFCX 8101 to proceed from the Mid South Refrigerated Warehouse to Train No. 50 as an empty on June 6, 1964. As a result of this charge, an appropriate hearing was held on June 15, 1964. Claimant was then notified that he was suspended without pay for a specific number of days.

On July 29, 1964, claim was filed on behalf of Claimant for wages lost, by the Local Chairman, Mr. McCollum, and was addressed to the Superintendent of Terminals, Mr. Delaney. On this very same day, July 29, 1964, Mr. Delaney replied to Mr. McCollum as follows:

"Your claim in behalf of H. T. Brewer is declined."

The Organization contends that the above declination does not comply with either Rule 43 of the basic Agreement or with Article V, Section 1(a) of the Agreement dated August 21, 1954. Rule 43 reads as follows:

"RULE 43. CLAIMS DISALLOWED

(Effective October 1, 1938)

When time is claimed in writing and such claim is disallowed, the employe making the claim shall be notified in writing and reason for nonallowance given." (Emphasis ours.)

Article V, Section 1(a), of the National Agreement dated August 21, 1954 reads, in part:

"* * * Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented * * *." (Emphasis ours.)

The rules quoted above are clear, precise, and totally devoid of ambiguity. The answer to the original claim, given by an officer of the Carrier, can in no way qualify as a compliance with the above-quoted Rule 43 or with Article V, Section 1(a), of the National Agreement dated August 21, 1954. The Carrier does not contest this, but rather relies on another response by its higher officer to a higher Organization officer who filed a letter on the same subject matter.

In view of the foregoing, we will accordingly sustain the claim. See Award 14749, including NDC Decision No. 5.

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

That the Agreement was violated.

AWARD

Claim sustained.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of October 1967.

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