



Award Number 17438

Docket Number CL-17716

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David H. Brown, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6463) that:

- (a) The Southern Pacific Company violated the current Clerks' Agreement between the parties when on November 7, 1967, it failed to grant Mr. John G. Leishman a duly requested hearing under the provisions of Rule 40 thereof; and,
- (b) The Southern Pacific Company shall now be required to grant a hearing in accordance with Mr. Leishman's request.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including subsequent revisions (hereinafter referred to as the Agreement) between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its employes represented by the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes (hereinafter referred to as the Employes) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

At the time of this dispute Mr. John G. Leishman, hereinafter referred to as the Claimant, was assigned to position of Head Timekeeper, General Office, seniority date April 15, 1941.

On October 29, 1967 he wrote the following letter to Mr. C. S. Grove, Manager, Payroll and Miscellaneous Services Bureau:

"October 29, 1967

Mr. C. S. Grove

I hereby request a formal investigation under Article 50 of the Clerks Agreement.

I hereby charge Mr. Ryan, Mr. T. Lane and Mr. DeGroot acting in a persistent manner telling me to violate the Trainmens Agreement by under and over paying in order to get the work out.

OPINION OF BOARD: Rule 50 of the Agreement provides:

"An employe who considers himself unjustly treated, shall have the same right of investigation and appeal if written request is made to his superior within ten (10) days of the cause of complaint."

On October 29, 1967, grievant wrote a letter to his superior requesting an investigation under the quoted rule. We set out the letter in full:

"I hereby request a formal investigation under Article 50 of the Clerks Agreement.

I hereby charge Mr. Ryan, Mr. T. Lane and Mr. DeGroot acting in a persistent manner telling me to violate the Trainmens Agreement by under and over paying in order to get the work out.

When I refused to violate the agreement without written authorization (as I consider that a form of embezzlement) they would accuse me of loafing. This has been going on for over a year. I will be more definite.

"1. Guarantee: Pick any Pool freight Run and use the total earnings of this run for the average earnings.

2. Deadheads: if not on crew sheet pay. I have seen a whole stack of deadheads to go keypunch without having been checked the same with waiting days.

3. Runarounds: Don't write any letters investigating, look on both trip reports and pay or deny. Better to pay, no kickbacks or phone calls that way, no headache.

4. Terminal Air test. Don't bother checking air sheets.

5. Yard days are allowed like they were nothing.

When they finally understood I would not be dishonest but pay all trainmen in a honest way they decided to remove me off my job as Head Timekeeper in the Train Section to a little job after 26 years experience in the train section. (At the Head Timekeepers rate of pay) in order to embarrass and humiliate me and this move was made by Mr. Ryan and Mr. Lane account Mr. Lane showing up on overtime drunk and Goddamming me. (See my letter of Oct. 27, 1967).

Also when submitting a claim Mr. Ryan would call me into his office and try to browbeat me, in violation of the Railway Labor Act. Also Timekeepers were told not to stop and talk to me, not to ask me questions . . . they had to phone me to ask a question."

The foregoing letter testifies to the reason for the rule provision which requires that the request for investigation be filed within 10 days of the cause of complaint. The charges made by Mr. Leishman are spread over a long and indeterminate period of time. They are not set forth with specificity. Under the rule Carrier had no obligation to conduct a fishing expedition based on scattergun charges. 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 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

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of September 1969.