



Award No. 18354
Docket No. CL-18616

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

PENN CENTRAL TRANSPORTATION COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6724) that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of five days suspension on Dominick Giaino, Foreman, Pennsylvania Station, New York, New York, New York Region, Metropolitan Seniority District.

(b) Claimant Dominick Giaino's record be cleared of the charges brought against him on October 8, 1968.

(c) Claimant Dominick Giaino be compensated for five days wage loss sustained by him as a result of the discipline.

OPINION OF BOARD: Claimant was assigned as a Foreman in the Baggage Department, Pennsylvania Station, New York, N. Y. On May 12, 1968, while checking storage mail cars, he stepped with his right leg into an opening between the platform and a car which caused him to fall, bursting and fracturing his left ankle — a fact with its surrounding circumstances of which Claimant's immediate supervisor was fully cognizant on the date of occurrence. As a result of the injury he was out of service from May 12 until September 19, 1968.

On October 8, 1968 — five months after the occurrence of Claimant's injury — Carrier served upon Claimant a notice to report for an investigation on October 15, 1968, in connection with the following charge:

"Violation of Safety Rule No. 2308 on May 12, 1968, at 2:15 P. M. while checking cars on Diagonal Platform, Track 1-D, Penna. Sta. N. Y. — failed to avoid opening and caused your right leg to go down between car and platform edge."

At the opening of the investigation on the appointed date Claimant denied that he was properly served with the charge. His representative, citing Rule 6-A-1(b), moved that the charge be dismissed on grounds that: (1) Claimant's immediate supervisor had knowledge of the occurrence involved on May 12, 1968; and (2) Carrier was contractually barred from filing the charge after 30 calendar days from the date of the occurrence. The Hearing Officer in denying the motion stated:

Inasmuch as this is question directed to the Conducting Officer, I contend that Rule 6-A-1(c) will apply in this particular case.

The Hearing Officer then proceeded to go forward with the investigation as to the merits of the charge. His subsequent decision found Claimant guilty as charged and discipline of five days' suspension was imposed. The decision of the Hearing Officer was sustained at each stage of the appeals procedure in the course of the usual handling on the property. Petitioner having preserved its right of appeal to this Board prays that we reverse Carrier's ruling on the motion to dismiss and that we award that Claimant be made whole as demanded in paragraphs (b) and (c) of the Claim.

The pertinent provisions of the Agreement, with emphasis ours, read:

"RULE 6-A-1.

INVESTIGATION, APPEAL, ETC.

(a) An employe who has been in the service more than 60 calendar days or whose application has been formally approved shall not be disciplined or dismissed without a fair and impartial investigation. He may, however, be held out of service pending such investigation only if his retention in service could be detrimental to himself, another person, or the Company. The investigation shall begin within 10 calendar days of the date when charged with the offense or held from service and completed as soon as possible. A decision will be rendered within 15 calendar days after completion of investigation.

(b) An employe charged with an offense shall be given written notice in advance of the investigation of the exact offense involved. No charge shall be made that involves any matter of which the employe's immediate supervisor has had knowledge 30 calendar days or more.

(c) The time limits for beginning the investigation referred to in paragraph (a) of this rule (6-A-1) are subject to the availability of the accused and witnesses to attend investigation and shall be extended by the equivalent amount of time the accused employe and necessary witnesses are off duty account of sickness, temporary disability, discipline, leave of absence or vacation. The time limits may be extended at any time by mutual agreement in writing between the Company and the accused employe or his duly accredited representative."

The material time limit in (a) of Rule 6-A-1 is that relative to the time within which the investigation is to be held after service of a charge. Rule 6-A-1(c) is specifically and exclusively, by its expressed terms, related

to 1(a) which does not mandate the time limitation within which a charge must be filed. Consequently, it in no manner modifies the time limitation within which a charge shall be made, unequivocally mandated in Rule 6-A-1(b). Therefore, Carrier not having served the charge on Claimant within the contractually prescribed time limitation, the investigation proceedings which are the subject matter of this dispute are void *ab initio*. We will sustain the Claim.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of December, 1970.