

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19261  
Docket Number SG-19290

Robert M. O'Brien, Referee

PARTIES TO DISPUTE: ( (Brotherhood of Railroad Signalmen  
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Penn Central Transportation Company (former New York Central Railroad Company-Lines West of Buffalo) that

Claim on behalf of Signal Maintainer T. L. Ference, which was presented to Carrier's Supervisor C&S, Mr. C. S. Paden, under date of October 17, 1969, by Local Chairman W. D. Smith, and which read:

"(a) Carrier failed to prove charges as referred to in the above paragraph.

(b) Signal Maintainer T. L. Ference was not accorded a fair and impartial hearing as required by Rule 51(A) of March 1st, 1951 Agreement.

(c) Carrier now be required to comply with Rule 51(f) of March 1st, 1951 agreement, and compensate Signal Maintainer T. L. Ference for six (6) days' pay at his regular rate of pay. Also, the suspended time and letter dated October 10, 1969, signed J. J. Baffa, be removed from his record and personal file."

should be allowed as presented because Supervisor Paden denied it without giving a reason as required by Article V-1(a) of the August 21, 1954 Agreement. (Carrier's File: m-1)

OPINION OF BOARD: Following a hearing, the propriety of which is not in issue before this Board, Claimant was assessed discipline. He was so notified by letter of October 10, 1969 from Division Engineer Baffa. If dissatisfied with this decision, Claimant had the right of appeal in succession up to and including Carrier's highest appeals officer. Rule 51(d) of the applicable Agreement sets forth the appeal procedure in discipline cases, such as the one before us. According to Rule 51(d), the matter should have been appealed initially to the Regional Engineer, C&S, Mr. E. E. Harris, within 14 calendar days of the October 10, 1969 letter. However, the Local Chairman by letter dated October 17, 1969, filed the appeal with the Supervisor C&S, who was not the officer next in succession to the Division Engineer. Rather, the Division Engineer is, in fact, the superior of the Supervisor.

The Supervisor denied the appeal without giving any reason therefore, and the Organization contends this violated Article V of the August 21, 1954 National Agreement, and as a result of such violation, the claim must be allowed as presented. Carrier counters by contending that the appeal to the Supervisor, C&S was a complete nullity since Claimant failed to follow the mandatory provisions of Rule 51(d), and merely because the Supervisor answered the letter of October 17, 1969, this does not make the appeal a proper one. Carrier says that since the Organization failed to follow the procedure prescribed in Rule 51(d), the claim is barred from consideration by this Board and should be dismissed.

The Organization concedes that it followed the wrong procedure and thus failed to comply with Rule 51(d), but argues that when the Supervisor answered the appeal, this obviated the error.

The present claim is a discipline matter and any appeal relative thereto must be pursuant to the procedure established by Rule 51(d). The Local Chairman failed to follow this duly established procedure and consequently the appeal became a nullity. And the fact that the Supervisor denied the appeal does not render it a proper one. The Carrier's action does not mitigate the Organization error.

This Board is always reluctant to decide claims on mere technicalities, but in the present claim we have no choice but to apply the Agreement as written. We cannot ignore the clear and concise language thereof. When the Local Chairman failed to follow the appeal procedure prescribed by Rule 51(d), he forfeited his right to have this Board decide the claim, and we are left with no alternative other than to dismiss it.

**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 Employee involved in this dispute are respectively Carrier and Employee 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

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That the Claim be dismissed.

A W A R D

Claim dismissed.

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By Order of Third Division

ATTEST: E. A. Kellum  
Executive Secretary

Dated at Chicago, Illinois, this 9th day of June 1972.