

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20035
Docket Number SG-19783

Burl E. Hays, Referee

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(The Denver and Rio Grande Western Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Denver and Rio Grande Western Railroad Company that:

(a) Mr. E. C. Maddox was denied the right by the Carrier to return to his job after presenting a certified opinion of his attending physician that he was able to resume work and requesting that he be returned to his position on March 1, 1971. Carrier had no adequate medical grounds for such refusal. Mr. Maddox was then denied the right to a hearing to correct this arbitrary and unjust treatment. This was in violation of the current Agreement with revisions and supplements between the Brotherhood of Railroad Signalmen and the Denver and Rio Grande Western Railroad Company.

(b) Mr. Maddox be returned to his position of Signal Inspector at Green River, Utah, immediately, and that he be paid for all time lost from March 1, 1971, at the rate of Signal Inspector with any and all applicable changes in that rate to apply. (Carrier's File: SG-1-71)

OPINION OF BOARD: The facts in this case are as follows: Under date of February 18, 1971, W. E. Ferguson, General Chairman of Local 24, Railroad Signalmen, Thornton, Colorado, wrote to B. C. Eaton, Signal Engineer of the Denver and Rio Grande Western Railroad Company, Denver, Colorado, attaching a letter from Mr. E. C. Maddox, Signal Inspector, dated February 16, 1971, addressed to Mr. Eaton asking to be returned to work after recovering from illness along with D&RG Form 4442, Section 12, signed by his physician, Dr. A. R. Denman.

Signal Engineer Eaton allegedly refused to permit Mr. Maddox to return to work, and on March 19, 1971, General Chairman Ferguson wrote to Mr. J. W. Lovett, Director of Personnel for Carrier in Denver saying: "We are appealing this claim to you in behalf of Mr. E. C. Maddox....".

Section 3, First (i) of the Railway Labor Act requires that disputes "...shall be handled in the usual manner up to and including the chief operating officer of the Carrier designated to handle such disputes." (Awards 15015, 15183 and 16336)

Rule 67 (Article V of the August 21, 1954 National Agreement) provides that all claims or grievances must be presented in writing to the officer of the carrier authorized to receive same within 60 days from the date of the occurrence on which the claim is based.

On December 18, 1969, at incumbent General Chairman's written request, Carrier's Director of Personnel furnished the General Chairman with the railroad business address of its Signal Supervisors, outlined appeal procedure, and named the personnel to whom certain appeals were to be made. This ~~on-the-~~ property procedure for handling claims has evidently been in effect since that time.

In the case before the Board Claimant Maddox's immediate superior was the Signal Supervisor in charge of the area in which he worked. This was the person with whom the claim should have been filed. However, the claim was not first presented to claimant's Signal Supervisor. Instead, it was presented to Carrier's Director of Personnel which was, in the opinion of the Board, an improper procedure.

The claim was not first presented to the officer designated to receive claims in the time allowed, nor was it appealed as prescribed in Rule 61-1(a), (b) and (c). (Award 15183). (Also First Division Award 21123).

Accordingly, and without reaching any other issue, we must find that the claim here asserted is barred because of Claimant's failure to present it to the officer of the Carrier authorized to receive same; and that it must, therefore, be dismissed.

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

That the claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1973.