NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20123
THIRD DIVISION Docket Number SG-19718

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(The Texas and Pacific Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Texas and Pacific Railway Company:

Signal Maintainer J. L. Shelton be promptly reinstated to his former position with seniority and all other rights unimpaired and his personal record cleared of any charge in connection with allegedly not protecting his assignment on August 15 and 16, 1970; and he be paid in full for all lost time resulting from the discipline of dismissal. /Carrier's File: B 315-29/

OPINION OF BOARD: This is a discipline case in which the Claimant was dismissed from service on September 14, 1970; subsequently, on December 7, 1970, he was restored to service but without pay for time lost. A claim for pay for the time lost was denied and, thus, the claim here seeks wage compensation for the period September 14, 1970-December 7, 1970. However, we have a threshhold problem involving procedure, for each party says the other has failed to comply with the time limit provisions contained in Article V of the August 21, 1954 Agreement.

The Petitioner's case is that, following initial appeal and denial thereof by Superintendent Conway, Carrier's Red River Division, the General Chairman, Mr. J. J. Morris, appealed to Mr. J. R. Wilson, Superintendent, Signals and Communications; the appeal was made by an October 6, 1970 letter which was received by Superintendent Wilson on October 8, 1970. Superintendent Wilson advised in a December 7, 1970 letter that Claimant was reinstated, on a leniency basis, effective immediately, but without pay for time lost. This letter was received by the General Chairman on December 8, which was 61 days after Mr. Wilson's receipt of the appeal on October 8. Hence, Mr. Wilson's denial of the pay claim was not in compliance with the 60-day time limit provision in the 1954 Agreement.

The Carrier's case is that Superintendent Wilson's December 7 letter also stated that the appeal from Superintendent Conway's decision should have been made to General Manager Love instead of to Superintendent Wilson. Thereafter, General Chairman Morris did file an appeal with General Manager Love, dated January 27, 1971, but this was more than 60 days after the General Chairman's receipt of Superintendent Conway's decision. Carrier says therefore that the claim was not appealed to the appropriate officer (General Manager Love) within the 60-day time limit provision in the Agreement.

The record shows that General Manager Love was the appropriate

officer to whom the decision of Superintendent Conway should have been appealed. This is evidenced by a Carrier letter of July 18, 1966, which is addressed to a number of General Chairmen, including General Chairman Morris.

Petitioner argues that its time limit contention must prevail, because the Carrier's time limit defense was not raised until after Superintendent Wilson's non-compliance with the time limits and because Award 17604 shows that the procedures involved here have been previously used on this same property by the parties. Petitioner also objects to Board consideration of Carrier's July 18, 1966 letter, because it was not made available to the Organization while the dispute was being handled on the property. The Carrier asserts that its time limit defense under Article V was timely raised and that Award 17604 has no relevance to the dispute.

Carrier's position is well taken and we shall dismiss the claim. Carrier's time limit defense was raised before the filing of notice of intent to submit the dispute to this Board and, accordingly, the defense was timely raised. Award 14355 (Ives). As regards the Carrier's letter of July 18, 1966, the General Chairman Mr. J. J. Morris was an addressee; he was therefore charged with actual notice of its content and it is of no significance that Carrier did not present the letter anew during handling on the property. In like vein, there is nothing of any significance to this dispute in Award 17604. The defense raised herein by Carrier is not treated in that Award and, moreover, even if the Carrier waived or overlooked the procedures in that Award, this single instance would not serve to modify Carrier's established procedures which designate the appropriate official for handling a particular step in the appeal procedure.

In view of the foregoing, and on the whole record, we shall dismiss 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 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

The claim is dismissed for non-compliance with Article V of the August 21, 1954 Agreement.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1974.