

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20506  
Docket Number MW-20621

Robert A. Franden, Referee

(Brotherhood of Maintenance of Way **Employees**  
PARTIES TO DISPUTE: (  
(**Houston Belt & Terminal Railway Company**)

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood that:

(1) The dismissal of **Trackman A. Diaz** was without just and sufficient cause and on **the** basis of unproven charges.

(2) The **claim as presented** to Chief Engineer L. J. Held by General Chairman Hawkes in a letter\* dated February 26, 1973 shall be allowed exactly as presented because Chief Engineer Held did not give reasons for his declination\* thereof dated March 2, 1973.

(3) **Trackman A. Diaz** be allowed eight hours' pay for each work day and each holiday beginning **January 2, 1973** and continuing until he is reinstated with seniority, pass and vacation rights unimpaired.

\*Reference **to** investigation held January 30, 1973, in connection with charges and dismissal of Section Laborer Arthur **Diaz**.

It is our contention that rules of our agreement are violated, especially discipline rule, and time is being claimed by and in behalf of Laborer **Diaz** for **8** hours each work day, including holidays falling therein, beginning January 2, 1973, and continuing until reinstated with seniority, pass and vacation rights unimpaired.

The transcript of investigation clearly shows that Mr. **Diaz** did not refuse to fill out Personal Injury Form **60-HB**; there is no rule that states a man must fill out these forms under the supervision of a railroad official. Should **Mr. Diaz** been given the forms to take home, they would have been properly filled out.

Therefore, we respectfully request that you allow this **claim**.

**\*\*** Reference your letter of February 26, 1973 claiming pay for **time** lost by Laborer Arthur **Diaz** account dismissal of Laborer **Diaz** from the service of the Houston Belt & Terminal Railway Company.

Your claim in behalf of Mr. **Diaz** is respectfully declined.

OPINION OF BOARD: **Trackman Diaz** was dismissed from **service** for failure to comply with the instructions of his superior and for failure to complete a personal injury report in accordance with **Rules E and F** of the General Rules.

E. Employees must render every assistance in their power in carrying out the rules and instructions. Courteous cooperation between employees is required for proper functioning under the rules and **instructions**.

F. **Employees** must report promptly to their **immediate** supervisor all injuries, no matter how trivial. In every case of personal injury in any branch of the **service**, a full and complete report must be made at once on prescribed form. They must obtain **immediate** first aid and medical attention for all injuries, when necessary.

The Organization alleges that the Carrier's response in declining the claim in the first instance failed to meet the criteria of Section 1(a) of Article V of the National Agreement of August 21, 1954 in that no reason for disallowance was given.

The Carrier's letter declining the claim and the above referenced provisions of the August 21, 1954 Agreement read as follows:

**CARRIER'S LETTER:**

"**March** 2, L973

File: 501.664

Mr. T. G. Bawkes, Jr., General Chairman  
Brotherhood of Maintenance of Way **Employees**  
200 Earloe Building  
Longview, Texas 75601

Dear Mr. Bawkes:

Reference your letter of February 26, 1973 claiming pay for time lost by Laborer Arthur **Diaz** account dismissal of Laborer **Diaz** from the service of the Houston Belt & Terminal Railway Company.

'Your claim in behalf of Mr. **Diaz** is respectfully declined.

Yours very truly

**/s/** L. J. Held

L. J. Held  
Chief Engineer

**LJH:** ch.

cc: Mr. B. C. Adams  
Mr. M. C. **Dement.**"

ARTICLE V. AUGUST 21. 1954 AGREEMENT

"1. All claims or grievances arising on or after January 1, 1955 shall be handled as **follows:**

(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date **of** the occurrence on which the claim or grievance is based. Should any such **claim** or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent **or** waiver **of** the contentions of the Carrier as to other similar claims or grievances."

The Organization urges the Board to allow the claim as presented in accordance with the above provision.

We are of the opinion that the March 2, 1973 letter of the Carrier quoted above does not meet the requirement of Article V in regard to a statement of the reason for disallowance of the claim. Accordingly, the claim shall be allowed "as presented" from January 2, 1973 until **May** 3, 1973.

It is clear from National Disputes Committee Decision 16 and the **many** awards in accord with said decision that a default of this nature is cured by a proper denial Letter which meets the requirements **of** Article V. In this case, said Letter was Carrier's Letter of May 3, 1973. See Disputes **Committee** Decision **16** and Awards 18130, 14603 **and** 15070.

We will **now** consider the merits of the case.

On December 20, 1972, Claimant suffered **an** injury while performing his job. He was requested to fill out a form **60-HB** personal injury report in accordance with **Rule F** quoted above. Further, **on January 2, 1973**, the **super-**

intendeat of Maintenance of Way personally instructed Claimant to fill out the form. Claimant refused to do so stating he wanted to take them home for his attorney to check. Claimant was then dismissed from service.

We have held before and now hold that the requirement that injuries by promptly reported is reasonable. In failing to file the report required by the rules from December 20, 1972 to January 2, 1973, the Claimant subjected himself to disciplinary action.

There is nothing in the record to indicate that the discipline rendered in this case was unjust or unreasonable. The Claimant had 12 days to confer with his attorney in regard to this matter. The Carrier waited a sufficient time for the Claimant to comply with its rules.

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* the Agreement was violated.

A W A R D

Claim sustained in part and denied in part in accordance with this Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 8th day of November 1974.