

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20657
Docket Number NW-20650

Joseph A. Sickles, Referee

(Brotherhood of Maintenance of Way **Employes**

PARTIES TO DISPUTE: (

(Louisiana and Arkansas Railway Company

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

(1) **Trackman** Moses Crockett shall be allowed eight hours' pay for each work day and holiday beginning with November 6, 1972 and continuing until he is reinseated and restored to service with seniority, pass and vacation rights unimpaired because of the Carrier's failure to hold and conduct an investigation in compliance with the procedural requirements of **Rule 13-2 governing** discipline (System File 013.31-131).

OPINION OF BOARD: On November 6, 1972, Claimant was removed from service as a result of an alleged failure to work overtime.

Rule 13-1 requires that employees who are disciplined or dismissed be advised, in writing, of the cause for such action.

Rule 13-2 states:

". ..If a hearing is necessary to determine the facts, it will be given promptly..." (underscoring supplied)

On November 6, 1972, the Organization requested an investigation (as soon as possible) **concerning** the dismissal. The following day, Carrier acknowledged receipt of the request and stated that it would advise further concerning **time**, date and place.

On November 29, 1972, **Claimant** was advised that the **formal** investigation would be conducted **on** December 19, 1972.

Claimant was reinstated to service on December 4, 1972, without pay for time lost.

Thereafter (on December 18, **1972**), the investigation was postponed to a later (unspecified) date.

On January **3, 1973**, the instant claim was submitted. It noted that inasmuch as the investigation was not held within the time **alloted** by the agreement, "**...at** this late date, it cannot be justly held..." (underscoring supplied)

On January 24, 1973, Carrier noted that the investigation "... is still pending and will be rescheduled within the very near future."

The handling of the matter, on the property, indicates that the investigation was scheduled (and postponed) on three (3) occasions after January, 1973. There is some suggestion that the Organization contributed to this further delay. In any event, as of October 3, 1973, an investigation still had not been conducted in this matter.

This is a case of first impression concerning these parties and does not admit of easy resolution. Carrier points out that the **Rules Agreement** does not specify a **time** period within which a hearing **must** be conducted, and cites a number of Awards which fortify its **admonition** to us that the **jurisdiction** of this Board is limited to an interpretation of existing Agreements; but does not permit us to alter **Agreements** and write specific **time 'limit** provisions. But, the cited Awards do not, in **our view**, resolve the **controversy**. We do have authority to interpret that portion of the Agreement which requires Carrier to afford a "prompt" hearing. **Implicit** in that language is the understanding that under certain circumstances a certain number of days of delay might constitute a violation; whereas other circumstances could dictate a different result. See Award 14223.

"**Prompt**" does suggest action without undue delay. Carrier's delay (until **November** 29, 1972) in scheduling the hearing, appears to be rather dilatory - and its decision to defer the investigation (at a time when **Claimant** was **put of** service) **until December 19, 1972** is further **indication** of a degree of disregard for its obligations under **Rule 13-2**. We do note, however, **that** neither Claimant nor the Organization raised any objection to the date of the initial hearing. Thus, if the hearing had been held as originally scheduled, we would be inclined to disregard the claim. But, here, the hearing (which was unduly delayed) was postponed at the last minute and not specifically rescheduled.

We do not concur with Carrier's contention; as stated in its Ex **Parte** Submission, that once the discipline had been reduced to a suspension, the need for prompt handling became less demanding. **Rule 13-2** requires "**prompt**" action concerning suspensions as well as terminations.

Under this record, limited solely to the facts and circumstances recited therein, we feel **that Rule 13-2** was violated, and we shall sustain the claim concerning the period November 6, 1972 through the date Claimant was reinstated (December 4, 1972).

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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 as stated in **Opinion of Board**.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 21st day of March 1975.