

NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23313
Docket Number MW-23308

THIRD DIVISION

Josef P. Sirefman, Referee

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PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(St. Louis-San Francisco Railway **Company**

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

(1) **The** Agreement was violated when the **Carrier** failed to schedule and hold an investigation **which** was timely **and** properly requested in **conformance** with Article 11, Rule 91(b)(1) (System File B-1791).

(2) As a consequence of the aforesaid **violation**, Claimant **Carl W. Cantrell** shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered beginning March 29, 1979."

OPINION OF BOARD: Claimant **Carl W. Cantrell** was employed as a **trackman** on April 12, 1976. He was injured on October 30, 1978 and required medical treatment. He did not return to work until March 29, 1979 when he was informed by the Carrier that he was no longer considered an **employee** because of his failure to obtain a leave of absence. On April 12, 1979 the General **Chairman** made a request for an investigation. In the April 27, 1979 Carrier response and throughout the subsequent written exchanges the Carrier maintained that the Claimant had no right to an investigation inasmuch as he failed to request a leave of absence before November 30, 1978 in accordance with Rules 183 and 87. No investigation was granted.

In its submission the Carrier maintains that Claimant's failure to obtain a proper leave of absence and to contact the **Company** for almost five months was in effect a voluntary quit and therefore there was nothing to investigate. As a corollary the union representation should have proceeded to the Director of Labor Relations as a non-disciplinary matter.

Sections (1) and (2) of Rule 91(b) of applicable agreement
read:

"(b) An employe who considers that he has been unfairly disciplined or dismissed, or who considers himself unjustly treated, shall be entitled to the **following** handling of his complaint:

(1) The **employe**, or the **General Chairman** acting in behalf of the employe, shall make written request for an investigation to the **employe's** immediate supervisor. Such request shall be made within 15 days from date of discipline, dismissal or alleged unjust treatment.

"(2) **If** a request for an **investigation** is **made** in compliance with requirements of paragraph (1) above, the employe shall be afforded a fair **and** impartial investigation. The **investigation** will be held within 15 days of the date of the request made by **the** employe or the General Chairman, **unless** a postponement is agreed upon by the Carrier and Organization representative."

As **Referee** Carter observed in a **Third** Division Award No. 22931 between the same parties "It is clear by its language that the provisions of **Rule 91(b)** are not restricted strictly to discipline cases, as the Carrier appears to **con-**tend. The Rule also applies to an employe who considers himself unjustly treated."

It appears that Claimant should have maintained **communication** with the **Carrier** over the months, over the extent of his **injury** and time required for recovery. **However**, to further quote **from** Award No. 22931 "at the **same** **time** we think that the Carrier was in error in not granting a hearing under Rule 91(b) when requested by the General Chairman."

In view of this **record** of inaction by both **parties** the appropriate **remedy** is that **Claimant** be restored to service **with** his seniority and other rights **unimpaired**, but **without** pay for **time** lost while out of service.

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;

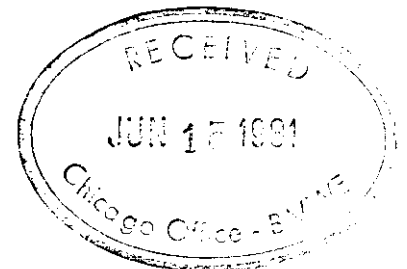
That the **Carrier** and the **Employees** involved in this dispute are respectively Carrier and **Employees** within the **meaning** of the Railway Labor Act, as approved June 21, 1934;

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 accordance** with the **Opinion**.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **Third** Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 29th day of May 1981.