

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23536  
Docket Number MW-22689

Dana E. Eischen, Referee

**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) Trackman-Driver S. G. Grantham was unjustly held out of service on July 25 and 26, 1977 by Foreman. A. Prichard..

(2) 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-1496).

(3) As a consequence of either or both (1) and/or (2) above, Trackman-Driver S. G. Grantham shall be paid for time lost on July 25 and 26, 1977."

**OPINION OF BOARD:** Claimant asked for and received permission to be off one day, July 18, 1977. He did not report to work the next day but apparently sent word to his foreman that he would not be in to work the balance of the week. It is not refuted that at his request and by agreement of his foreman and roadmaster, Claimant was carried on vacation for the week of July 18-22, 1977. However, when he returned to work on July 25, 1977, his foreman suspended him for two days without pay for not reporting back to work on July 19, 1977. Under date of July 28, 1977 Claimant's union representative filed claim as follows:

"This office has received a complaint from trackman driver S. G. Grantham advising that he was unjustly held off his regular assignment without pay on July 25 and 26, 1977 by the foreman of his gang, H. A. Prichard.

We now request that Mr. Grantham be paid for time lost on July 25 and 26, 1977 and that an investigation be held as provided for under Article 11, Rule 91(b) (1), of the effective agreement dated August 1, 1975.

Will you please advise."

**Carrier's Division Engineer** to whom the **claim is addressed** did not respond nor **was** 8 hearing held 8s requested. **Under date** of August 12, 1977 the **Organization's General Chairman** requested **payment** of the **claim on grounds** of failure to comply with Rule 91(b) which **reads** 8s follows:

"(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 8 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 representatives.** (Emphasis added).

The **Division Engineer** responded the next day by advising that he had been on **vacation** and therefore delayed responding to the July 28, 1977 letter; that the **claim was** without merit, and that a hearing would now be held if the employes still desired. The **Organization** declined this letter offer and **Carrier rejected all appeals of the claim on the property.**

We shall **sustain the claim on the basis of the patent violation of the clear and unambiguous language of Rule 91(b) (2), pursuant to whether Claimant was entitled to a hearing on or before August 14, 1977. In so holding we do not reach and express no opinion upon the writs. See Third Division Award No. 22162 and other awards cited therein. Parts 2 and 3 of the claim are sustained without reaching the merits of Part 1.**

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.**

Award Number 23536  
Docket Number MW-22689

Page 3

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Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: *A. W. Paulson*  
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1982.