

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26731

Docket Number SG-27171

Elmer Thias, Referee

PARTIES OF DISPUTE: (Brotherhood of Railroad Signalmen
(National Railroad Passenger Corporation (Amtrak))

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Rail Passenger Corporation (AMTRAK):

Claim on behalf of R. N. Reeley, Jr., for payment of five (5) days pay account of being suspended after his second level appeal hearing on April 3, 1985, account of Carrier suspended him while his discipline was on appeal in violation of Article 7, Section 1(a). Carrier File: NEC-BRS-SD-213D."

OPINION OF BOARD: Under date of January 18, 1985, the Claimant was charged with a violation of Carrier's Rule 4007 occurring on January 17, 1985, and Trial was held on February 8, 1985. A Notice of Discipline was issued to the Claimant on February 21, 1985, and that Notice indicated a ten day suspension was imposed with same to be put into effect on March 18, 1985. The Organization took appeal on behalf of the Claimant to the Assistant Chief Engineer on February 28, 1985, and an appeal Hearing was held on April 3, 1985. The Claimant was present at the appeal Hearing. On April 4, 1985, the Assistant Chief Engineer reduced the discipline from a ten day to a five day suspension and so notified the Claimant. In the interval between the date of the Organization's appeal on behalf of the Claimant (February 28, 1985) and the date of the Assistant Chief Engineer's decision (April 4, 1985), the Claimant was required to serve five days of the announced ten day suspension.

The finding by the Carrier on Claimant's guilt of the offense for which he was charged is not disputed. He admitted his guilt during the Investigation. This was the Claimant's first offense and the measure of discipline has continued to be disputed by the Organization from its inception. More particularly, however, the parties are in dispute in the matter of the Claimant having been required to serve five days of the announced suspension during the period of time extending from when appeal was taken to the Assistant Chief Engineer and announcement of his decision on that appeal. The Organization relies upon Article 7, Section 1 of the Agreement which we reproduce, in pertinent part:

"(a) An employee may appeal from discipline imposed on him if he does so in writing to the Assistant Chief Engineer, Communication and Signal/Electric Traction within ten (10) days from the date he receives notice of the imposition of such discipline, and if he so appeals he shall be given a hearing. When an appeal from discipline is made to the Assistant Chief Engineer, Communication and Signal/Electric Traction, this appeal shall act as a stay of application of discipline in all cases except where the discipline has been dismissal. If the original discipline imposed is upheld upon appeal, in whole or in part, the discipline will then be placed in effect and appeals to higher officers shall not act as a stay."

It is clear on the record that the Claimant was required to serve five days of suspension and incurred a five day loss of wages when his pending appeal had neither been heard nor decided. The provisions of the Agreement quoted above are clear that his appeal shall act as a stay of application of discipline in all cases except where the discipline has been dismissal. The Organization insists that the Carrier's failure to observe the stay prejudiced the Claimant's position and Carrier is required to reimburse the Claimant for his wage loss.

The Carrier concedes its imposition of the suspension was precipitate but maintains the position there is no showing of harm to the Appellant by reason thereof. The Carrier adds that the suspension imposed when it was did not deprive the Claimant of his rights of appeal, did not delay the handling of the appeal and is not a sufficient basis to set aside the assessed discipline. Finally, Carrier submits that this Board's finding in Third Division Award 24468 is appropriate to be followed in this dispute.

We have reviewed Award 24468 but do not find the Award persuasive. The Award mentions procedural objections but neither identifies nor describes those objections. The objections were found not timely or did not affect the investigative Hearing or the propriety of the resulting discipline. Without more, we are unable to conclude the Award to be on point in this dispute.

The record is clear that the Claimant was prematurely suspended from service for five days. The Agreement prescribed it would be stayed. The Carrier's assertions that the Claimant was not harmed and his rights were not prejudiced are not substantiated. The Claimant complied with the requirements of the Agreement in taking appeal to the Assistant Chief Engineer and he was entitled to a Hearing and decision before the discipline was placed in effect. The Carrier cut short the Claimant's right to appeal, consideration and decision by the Assistant Chief Engineer without the encumbrance of an actual suspension and its concomitant wage loss. This was done under circumstances where the appeal made on behalf of the Claimant was directed primarily, if not solely, to the quantum of discipline to be imposed.

Hence, we see the Carrier's position to be misdirected in its focus upon after-the-fact events while standing on the questionable premise that the Assistant Chief Engineer's decision would be the same irrespective of whether the stay was or was not observed. The Carrier has the burden of proof for the foundation of its position and that burden has not been met.

The procedures in taking and deciding appeals to the Assistant Chief Engineer are set forth in detail within the provisions of Article 7, Section 1(a) and there is no dispute between the parties of what the procedures prescribe. The Carrier has recognized that imposition of discipline prior to a decision by the Assistant Chief Engineer was precipitate. The parties agreed discipline would be stayed in the circumstances here involved and we do not view the prescribed stay as inconsequential.

Upon review and consideration of the entire record, it is our determination that the Claimant be paid for his five day loss of wages. However, the Carrier's finding on the offense with which the Claimant was charged is not disturbed.

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: _____


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of December 1987.