

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27985
Docket No. SG-27777
89-3-87-3-267

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (Seaboard System Railroad (SCL))

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard System Railroad, the former Seaboard Coast Lines Railroad Company (SCL):

Claim on behalf of Brother P. F. Pace that he be paid for all time lost as a result of disciplinary suspension for thirty days (from April 10 to May 9, 1986) assessed after investigation conducted on March 21, 1986. Carrier file 15-47 (86-24) I."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This is a dispute requiring the Board to consider alleged procedural violations of the Agreement. In the facts of this case, Claimant attended an investigation held on March 21, 1986, into possible dishonesty associated with inspection of territory and replacing missing bond wires.

By letter dated May 15, 1986, the Organization appealed the Claimant's thirty (30) days suspension. It noted that the Claimant had not received a transcript of the investigation. The Organization also pointed out that the General Chairman had not received a copy of the letter assessing discipline and was missing an exhibit to the transcript.

The Carrier contends that the appeal came after the thirty (30) day time limit required by the Agreement and was therefore untimely. It further argues that the evidence proved the Claimant guilty as charged and the technical violations did not prejudice Claimant's Agreement rights.

The record before this Board shows that the Claimant requested an appeal after the time limits had expired. The Organization admits by letter of June 12, 1986, to the time limit default, but argues its cause to be the Carrier's failure to notify the Organization of its discipline decision. We find no probative evidence in this record to support that position.

The Board finds that the Carrier's failure to provide the Claimant a copy of the transcript and to provide the Organization with a copy of the discipline notice were improper and technical violations of Rule 47. Had the Carrier not reached a decision (Third Division Award 2590), failed to reach a decision within the time limits of the Agreement (Third Division Awards 5472, 3502, 8160, 10035, 11019), or failed to notify the employee (Third Division Award 3697), this Board might have reached a different decision. Herein, we can find no evidence that Carrier's technical violation prejudiced Claimant's rights or undermined his opportunity to appeal.

This Board has held that the Carrier must hold to the procedural requirements of the Agreement and failing to do so jeopardizes its case before us. But when, as here, inadvertent errors cannot be shown by probative evidence to impair the Claimant's rights, this Board will not, in the absence of specific Agreement language mandating remedy for said violations, overturn Carrier's decision on procedural grounds (Third Division Awards 22703, 20423).

As to that decision, we have carefully reviewed the record. We hold that the Carrier's discipline was fully warranted by the facts of this case. Finding the Claimant's guilt proven and the procedural errors of the Carrier to have no negative effects on the Claimant's Agreement rights, we will deny this Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Devor - Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1989.