

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31496
Docket No. SG-31588
96-3-93-3-591

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

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company (SP):

Claim on behalf of I.R. Pena to have removed from his personal record a memorandum dated July 17, 1992, account Carrier violated the current Signalmen's Agreement, particularly Rule 53, when it placed the disciplinary memorandum in the Claimant's record without affording him the right to a fair and impartial investigation, and Rule 54, when it did not provide notice of the disallowance of the claim within 60 days from the date the claim was filed. Carrier's File No. SIGD92-9. General Chairman's File No. SWGC-479. BRS File Case No. 9206-SP."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

There is a fatal procedural defect present in this case which prevents the Board from reaching the merits of the dispute. It is clear from the record that Carrier failed to issue a timely response to the grievance which was filed by the Organization. Carrier candidly acknowledges this dereliction in its Submission to the Board, yet it asks that the Board resolve the dispute on its merits. This the Board cannot do.

Rule 54 of the Agreement reads as follows:

"RULE 54

CLAIMS AND GRIEVANCES

(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of occurrence on which the claim or grievance is based. Should any such claim be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

This Rule is clear, unambiguous and applicable in this case. Carrier did not comply with the requirements of the Rule. Therefore, ". . . the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

The claim as outlined in the Statement of Claim, supra, is sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of May 1996.