

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37267
Docket No. MW-37866
04-3-03-3-207

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [Level 3 with five (5) day suspension] imposed, without a fair and impartial hearing, upon Mr. P. Silos for alleged violation of Union Pacific Rule 70.3 on December 14, 2001 was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File W-0248-156/1317888).
- (2) As a consequence of the violation referred to in Part (1) above, Mr. P. Silos' record shall be cleared of the Level 3 discipline and he shall be paid for all lost compensation for the five (5) days he was withheld from service.”

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 were given due notice of hearing thereon.

The instant incident occurred on December 14, 2001. The Carrier initiated discipline for said incident when Supervisor D. Wengler contacted the Claimant on December 21, 2001 and instructed the Claimant to report to his office. It is apparent that the Claimant did go to Wengler's office. At that time, the Claimant signed a waiver acknowledging receipt of discipline, but did not affirmatively indicate in writing that he was rejecting the discipline. However, the Claimant verbally informed Supervisor Wengler that he intended to reject the discipline.

The crux of the matter is whether the Claimant waived his right to a formal Investigation when he allegedly failed to notify the Carrier in writing of his rejection of the discipline within 15 days of notice of the proposed discipline.

Rule 48(a) of the Agreement states in pertinent part:

"Discipline will be considered accepted if formal rejection is not received within fifteen (15) calendar days from the date of receipt of Carrier's letter."

According to the Carrier, the Claimant failed to formally reject the discipline and request an Investigation within the required 15 days as mandated by Rule 48. Therefore, the Carrier asserts that his right to an Investigation was waived.

Conversely, the Organization claims that the Claimant effectively requested an Investigation when he verbally informed Supervisor Wengler of his intent to reject the discipline, contractually requiring the Carrier to conduct an Investigation.

We reviewed the matter and note that the burden is on the Organization. On December 21, 2001, the Claimant signed the "Receipt of Hand Delivery" portion of the Waiver form. However, the Claimant failed to sign that portion of the form indicating rejection of the discipline and request for Investigation. While it is uncontested that the Claimant verbally informed Supervisor Wengler of his intent to reject the discipline, we cannot find that the Claimant prepared a formal rejection as required by the Agreement.

The Rule regarding formal rejection of discipline was clearly enunciated in Third Division Award 32200:

"Second, the Carrier pointed out, without dispute by the Organization, that since the Carrier and the Organization revised the discipline Rule, 'formal' rejection has always been considered to be the signing of the proposal waiver. . . . Third, if 'formal rejection' can be indicated by a phone call or a conversation, what would be the definition of an 'informal rejection?' Logic supports the position of the Carrier."

As noted above, in a Rules case, the burden is on the Organization. We find that the Claimant did not prepare a formal rejection of the discipline, but instead only verbally rejected the discipline. A verbal request for Investigation is insufficient to trigger an Investigation. Therefore, we cannot find that the Organization met its burden of proof and we reject its position.

The claim is without merit. It will be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 5th day of November 2004.