

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Delaware, Lackawanna & Western Railroad Company, that M. Slocum, regularly assigned first trick towerman at Bridge 60, Scranton, Pennsylvania, hours 7:30 a. m. to 3:30 p. m., who was required by the Carrier to attend a hearing at 10:00 a. m., June 29, 1943, in the office of the Superintendent at Scranton, to determine his responsibility in the delay to passenger Train No. 72, at Bridge 60, February 27, 1943, and for whom judgment was found in his favor, shall be compensated under the mandatory provision of Rule 10(a) of the Telegraphers' Agreement for the one days' wage loss suffered by him by his attendance at the hearing on June 29, 1943.

EMPLOYEES' STATEMENT OF FACTS: An Agreement by and between the parties bearing effective date of May 1, 1940, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

Mr. M. Slocum, assigned hours 7:30 A.M. to 3:30 P.M., was the regular towerman and on duty at Bridge 60, Scranton, February 27, 1943. On this date passenger train 702 was delayed, which in turn delayed passenger train 3, because an L & S delivery drag consumed excessive time in pulling over the interlocking plant. Mr. Slocum was accused of using poor judgment.

By letter March 10, 1943, Superintendent Murphy, without a hearing as prescribed by Rule 10(a), assessed Mr. Slocum's personal record with a reprimand. The assessment was protested as not having merit and, as well, the placing of it on the personal record without a hearing.

At conference June 10, 1943, it was agreed the discipline would be cancelled and that a hearing would be held—this confirmed by letter. Hearing was conducted beginning 10:00 A.M., June 29th. Based on the evidence adduced, Mr. Slocum's representatives held that Mr. Slocum was not guilty of violating any rule, nor did he exercise poor judgment. The Carrier's representatives did not render a decision, but after being traced for a decision and copy of the transcript of evidence (to this day the Carrier has declined to furnish the accused with copy of the stenographic transcript of the hearing) on October 6, the Carrier's General Superintendent, Mr. P. M. Shoemaker advised the accused by letter that the demerits (first it was a reprimand) charged against his personal record had been cancelled.

The Carrier has declined to compensate Mr. Slocum for the day's wage loss, June 29th, the date of the hearing.

Under date of October 6, 1943, Mr. Slocum requested his case be discussed at the next conference with Mr. Shoemaker. Conference took place on October 21, 1943, in the office of General Superintendent Shoemaker. Mr. Slocum's case was discussed, along with several other cases. Mr. Shoemaker advised Mr. Slocum that the one demerit placed in his personal record would be removed. This was confirmed by letter to Mr. Slocum on December 6, 1943, which reads:

"Referring to Case No. 106, in regard to your discipline case.

"In accordance with my conversation with you, arrangements have been made to cancel demerits charged against your record."

A period of two and one-half years elapsed before Mr. Slocum filed claim direct with General Manager Shoemaker for one day for time lost on June 29, 1943.

Under date of May 29, 1946, General Manager Shoemaker wrote Mr. Slocum as follows:

"Your letter May 17, 1946, in Case No. 106, covering day's pay for yourself on June 29, 1943.

"Under date of October 6, 1943, you wrote me about your discipline. We discussed it on October 21, 1943, and my file bears the pencil notation that I had agreed with you to remove the demerit. No information was given at that time that you had lost a day's pay. This apparently closed out your Case No. 106 which, from my standpoint, started with your letter to me April 9, 1943.

"I do not understand your now attempting to reopen the matter two and a half years later. Former Superintendent Murphy who handled this situation at Scranton at the time of its appearance has retired, and I see no consistency in reopening the matter."

Under date of June 18, 1946, Mr. Slocum answered Mr. Shoemaker as follows:

"Your letter of May 29, 1946, which concerns a day's pay in favor of M. Slocum having been required to vacate his regular position on June 29, 1943, and subsequently declared not responsible, is entirely unsatisfactory—and appeal is in order. * * *"

In the case before your Board, a hearing was conducted at the request of the employes, subsequent to the removal of reprimand placed in Mr. Slocum's personal record. The record does not show that subsequent to June 29, 1943, a demerit was charged against Mr. Slocum. Demerit shown under Item 12, Bulletin Order No. 1029, March 31, 1943, was removed from his record under date of June 11, 1943. On October 21, 1943, the General Superintendent was not aware that the demerit had been removed by former Superintendent G. W. Murphy on June 11, 1943, when the matter was taken up directly with him, by-passing the Superintendent, in violation of procedure on this Property.

We think the claim of the employes is pretty far fetched when they allowed over two and one-half years to elapse and then attempted to reopen the matter. Stale claims are to be deemed abandoned. (Awards 8277 and 10148)—First Division—and 2550—Third Division—3 years). Further, the procedure of handling a claim for a day's pay was not strictly in accordance with the requirements of the Railway Labor Act and procedure on this property; hence, this Board lacks jurisdiction—(Award 730—Second Division). There is no justifiable reason for the claim to be before your Board and it should be denied.

OPINION OF BOARD: Claimant was the regular towerman on duty at Bridge 60, Scranton, Pennsylvania, on February 27, 1943. On this date passenger trains 702 and 3 were delayed because Claimant permitted an L & S

delivery drag train to pull over the interlocking plant when time did not permit it to clear Train 702. The Superintendent assessed Claimant's personal record with a reprimand without an investigation. The reprimand was subsequently cancelled and an investigation held. No decision was ever rendered. The Superintendent advised the Organization that the discipline assessed was cancelled. The claim is for pay for the one day spent in attending the hearing on June 29, 1943.

The applicable rule is in part as follows:

"If the judgment shall be in his favor, he shall be compensated for the wage loss, if any, suffered by him."

Claimant was never found guilty and disciplined in accordance with the Agreement. This is the equivalent of a judgment in his favor under the provisions of the quoted rule.

Carrier contends that this is a stale claim and should be treated as abandoned. We think not. The Carrier contributed to the delay in failing to make a final disposition of the matter. It is not a claim so old that it can be treated as abandoned. An affirmative award is required.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively carrier and employes 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 as alleged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 22nd day of May, 1947.