Award No. 8712
Docket No. SG-9958

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Illinois Central Railroad Company that:

(a) The Carrier violated Article 7, Section 73 of the Signalmen's Agreement when it removed Signalman J. M. Tabor from his regularly bulletined and assigned Signalman's position in Signal Gang No. 1, at noon on August 31, 1956, and held him out of service of the Carrier without first holding a fair and impartial investigation; when an investigation was held on Thursday, September 6, 1956, Signalman Tabor and his representative (General Chairman C. S. Chandler) were denied the right to cross-examine and ask questions of the witnesses used and called upon by the Carrier to testify against Signalman Tabor; Superintendent H. L. Williams failed to render a decision on the hearing which was held at 8:00 A.M. and completed at 9:00 A.M. on October 3, 1956, within seven (7) days after completion of the hearing.

(b) The Carrier violated Article 7, Section 74, of the Signalmen's Agreement when Engineer Maintenance of Way J. C. Jacobs failed and/or refused to grant and hold a hearing on the appeal taken with him within ten (10) days, consequently could not and did not render a decision on the hearing and appeal within five (5) days.

(c) The Carrier violated Article 7, Section 80, of the Signalmen's Agreement when it failed and/or refused to strike the unsustained charges from Signalman Tabor's record and reinstate him to his former position with full compensation for the assigned working hours actually lost while being held out of service.

(d) The Carrier violated Article 8, Section 90, of the Signalmen's Agreement when it refused to reimburse Signalman Tabor for the losses sustained account of the Carrier's violation and misapplication of the provisions of the Signalmen's Agreement.

(e) The Carrier now reimburse Signalman Tabor at his respective pro rata rate of pay for each eight hour day, or portion thereof, that he lost from noon, August 31, 1956, until such time as he is returned to his former position of Signalman in Signal Gang No. 1, with all seniority and rights unimpaired as enjoyed before his dismissal and that he be compensated actual expenses incurred while attending investigations, hearings, and personal expense incurred in the appealing and handling of this case. [Carrier's File No. 135-296-95 Spl., Case No. 24, Sig., which the Carrier consolidated into one claim and file number in its letter of December 18, 1956.]

OPINION OF BOARD: Claimant, a signalman in Signal Gang No. 1 of the Springfield Division, was removed by the Carrier from his position on August 31, 1956, and charged with insubordination. An investigation was held of the charges on September 6, 1956, which resulted in a decision dated September 10, 1956, dismissing claimant from Carrier's service. The claim was progressed through the various appellate steps without any change in the decision.

At the investigation claimant appeared in person and was represented by the General Chairman. This investigation appears to have been fairly conducted in accordance with Section 73 of the applicable agreement and although petitioner has objected that its freedom to cross-examine and develop its own case were unduly restricted, these objections are, in our opinion, frivolous and inconsistent with the record, particularly in the light of the General Chairman's express assurances to the Carrier's Superintendent at one of the appellate hearings that he took no exceptions to the investigation and did not desire to question any of the participants in that investigation.

The following procedural objections advanced by petitioner raise more serious questions and must be considered before turning to the merits of the case:

1. Carrier's removal of claimant from work before an investigation was held was in violation of Section 73 of the Agreement.

2. Section 73 was also breached by Carrier since a decision on the first step appeal was not rendered within the stipulated time.

3. In violation of Section 74, Carrier did not act on the appeal in its second stage within the prescribed period.

The first objection set forth above is untenable. Section 73 prescribes that "An employe who has been in the service more than thirty (30) days will not be disciplined or held out of service without an investigation, * * *." We do not agree with petitioner's contention that this language means that an employe must have an investigation before he is withheld from employment. The interpretation advocated by petitioner would be, in our opinion, both unrealistic and impractical and we are satisfied that the correct meaning of the pertinent portion of the section is that an employe shall not be suspended or discharged without an investigation, although such investigation will not necessarily antedate his removal from his position. Awards 7210, 6868, 6399, 3857 and 2528, cited by petitioner, are not at variance with this conclusion. In the present case, claimant was, in effect, suspended pending investigation; he did receive a prompt investigation and Section 73 was duly complied with in that regard.

Objections (2) and (3) above relate to Carrier's alleged failure to comply with prescribed time limitations in acting on petitioner's appeals. In each of these instances, we find, the Carrier's representative concerned did act on the appeals before him within sixty days from the time the appeals were received, although in at least the latter instance he did not comply with the much shorter time limits imposed by Section 74. While Sections 73 and 74 relate specifically to discipline cases, it appears that those provisions were superseded by Article V of a new agreement entered into on August 21, 1954, by the Carrier and Organization, as well as others. This new agreement provides for time limits of 60 days for Carrier action on appeals and nothing in that agreement or in any other provision called to our attention negates the conclusion that these time limits apply to all types of claims, including discipline cases of the type before us. That such discipline claims are within the purview of the 1954 Agreement is demonstrated by the last sentence of Article V, Section 3, which reads as follows:

> "* * * With respect to claims and grievances involving an employee held out of service in discipline cases, the original notice of request for reinstatement with pay for time lost shall be sufficient."

In view of the foregoing considerations, it is our finding that the time limits stated in Article V of the 1954 Agreement supersede those stated in Article 7 pertaining to taking appeals and rendering decisions thereon. Accordingly, no rights of petitioner were violated if the Carrier's representatives exceeded the time limits of Sections 73 and 74, since they did take the necessary action within the 60 day period provided for in Article V of the 1954 Agreement.

Turning now to the merits of the case, we find that the alleged insubordination consists of the following facts:

> On August 31, 1956, claimant was instructed by Signal Foreman Kennedy, his immediate superior, to protect the assignment of a vacationing signal maintainer at Bloomington, Indiana, effective September 4, 1956. He informed Kennedy that he would not comply with these instructions and remained adamant in this refusal even after the Supervisor of Signals personally ordered him to accept the assignment and informed him that, should he persist in his refusal, he would be removed from his position pending investigation.
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> At the time, claimant asked to be permitted to talk to his General Chairman before answering but the Supervisor insisted that he would have to tell him immediately whether or not he would work as ordered. Claimant refused to accept the work and was immediately taken out of service.

These facts are not controverted and while it appears that claimant handled himself with due restraint, the conclusion is inescapable that his refusal amounts to insubordination. Obviously, it is not compatible with sound operational practices, particularly in the far-flung industry here concerned, to permit each employe to place his own interpretation upon the provisions of the agreement before deciding whether he will obey the instructions of his supervisors. While claimant may well have felt that his superiors were requiring him to perform work contrary to the agreement, his duty was to follow orders. He had proper means of remedying the condition through the grievance machinery of the agreement. See Awards 7921, 5170, 4886 and 3260.

There is no suggestion that the orders in question were part of a program to single claimant out for discriminatory treatment or that the work he was ordered to perform would serve to humiliate, discredit or endanger him. An examination of the record fails to persuade us that claimant was subjected to provocation of such a nature as would excuse his refusal. Although it does appear that claimant had been led to understand by his General Chairman that he would not be required by the Carrier to perform the work that is the subject of this dispute, we cannot find that this circumstance justifies his refusal to follow orders.

In view of the foregoing considerations, the claim must be denied.

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

That the parties waived hearing on this dispute; and

That the Carrier and the Employe involved in this dispute are respectively carrier and Employe 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 there has been no violation of the applicable Agreement effective October 1, 1936, as Amended July 1, 1947, September 1, 1949 and August 21, 1954.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 4th day of February, 1959.