

Award No. 9104
Docket No. SG-11043

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE NEW YORK CENTRAL RAILROAD, EASTERN DIVISION
(Except Boston and Albany Division)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the New York Central Railroad Company (Buffalo and East) that:

(a) The Carrier violated the current Signalmen's Agreement dated September 1, 1945, with amendments to April 1, 1952, as amended (particularly Rules 88, 89, 91, 92 and 93), when, on February 20, 1958, it dismissed J. J. Donnelly, assigned Signal Maintainer, Section 6, Kingston, New York, without a fair and impartial hearing, when it failed to honor Local Chairman A. E. Ganson's appeal on the discipline assessed Signal Maintainer J. J. Donnelly on February 20, 1958, and when hearings were not granted following appeals of the Local Chairman and General Chairman.

(b) The Carrier now reinstate J. J. Donnelly, with all seniority and rights unimpaired, and compensate him for all wages and other losses sustained account of action of the Carrier in dismissing him. [Carrier's file 114-B (SG 58.2).]

OPINION OF BOARD: Claimant Signal Maintainer, on duty 7:30 A. M. to 4:00 P. M. less 30 minutes for lunch, left for home about 1:30 P. M. "account of being sick." Admittedly he made no attempt to obtain permission or to advise anyone of his leaving and told the man he was working with that he was going to the Maintainer's shop. His only statement of ground or nature or extent of illness was that he took two cold tablets on leaving home though advised by his doctor not to go to work after taking the tablets.

After a hearing on charge of absenting himself without proper authority Claimant was dismissed from service.

The Local Chairman sought to appeal the decision to the District Signal Engineer, stating only that certain evidence did not show on the transcript

(as to which he was in error) and that Claimant had marked off sick the following day and had not since been able to report back.

Upon being advised that the appeal should be made through the General Chairman an appeal was made by him "for further consideration" for the reason that the Brotherhood was of the opinion that the discipline given was too severe.

Upon denial of that appeal, which referred to Claimant's past record as justifying the penalty, further appeal was taken to Assistant General Manager—Labor Relations, stating only that the Brotherhood contended that Claimant could not be disciplined on his past record and that the discipline was too severe, wherefore they appealed for further consideration.

This appeal was denied with specific denial that Claimant had been disciplined on his past record. Thereupon the present claim was filed with this Division.

The only claim or grievance presented to any officer of the Carrier was "for further consideration" on the ground that the discipline was too severe and that it was based on past record. The claim presented here is entirely different and based on different grounds than progressed or presented on the property so must be dismissed.

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;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 claim is not properly before this Board.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of December, 1959.