

Award No. 10318

Docket No. MS-12528

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

WARREN M. BARNETT

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Warren M. Barnett hereinafter referred to as Claimant is being held from the service of the Missouri Pacific Railroad Company and deprived of his job in violation of Agreement Rules that:

1. Carrier violated the Agreement Rules 18, (a), (b), (d), (f), (h), (k).
2. Carrier violated the Agreement Rules 43, (1. (a)), and (3).
3. That the Carrier furnish complete and accurate copy of transcript of investigation held November 21st, 1961, to Claimant.
4. That claim for \$500.00 be paid Claimant for failure to give decision within 60 days as provided under Rule 43, (1. (a)).
5. That Claimant be compensated for all time lost at his rate of \$20.44 per day Check and Transfer Clerk and be returned to active duty (service) as provided by Rule 18 (f).
6. That the Carrier's action was arbitrary, unjust and unreasonable and violates the spirit of adjusting disputes in an established and reasonable time limit.
7. That the charges against claimant were not sustained.
8. That all sustained claims be paid by Carrier and acted upon promptly and without delay.

OPINION OF BOARD: The record shows that Claimant was relieved from service and charged with violating instructions of a superior on November 15, 1960. An investigation was scheduled for November 21, 1960. A review of the transcript reveals that Claimant's conduct prevented Carrier from holding a fair and impartial investigation on the date scheduled, as provided in Rule 18 of the Collective Agreement.

The Carrier offered to hold another investigation on the condition that Claimant would conduct himself properly and be governed by the standard procedures for holding such investigations. Claimant has refused such offer and elected to stand on the investigation of November 21, 1960, wherein he

had prevented full disclosure of evidence in connection with Carrier's charge of November 15, 1960.

The record further reveals that Claimant has not been discharged from Carrier's service, he being merely suspended pending a proper investigation, which Carrier states that it "stands ready at all reasonable times to afford the Petitioner upon his representation that he will conduct himself properly in the investigation and be governed by the standard procedures for the conduct of investigations of all classes of employees on this property.

Under these circumstances, the Board has no alternative than to dismiss the claim.

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 Employee involved in this dispute are respectively carrier and employee 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;

That the dispute has not been handled to a conclusion on the property.

AWARD

Case dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of January 1962.