

Award No. 11283
Docket No. SG-10662

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the St. Louis Southwestern Railway Lines that:

(a) The Carrier violated Rule 63 of the current agreement when it held an investigation of Signal Maintainer H. J. Carter at Pine Bluff, Arkansas, instead of Rector, Arkansas, the claimant's home station, and at the investigation conducted on August 19, 1957, the Carrier denied the claimant a fair and impartial hearing. The Carrier further violated the agreement when it assessed the claimant's personal record with twenty-five demerits notwithstanding the fact that the investigation developed that the claimant was not guilty of the charges placed against him in the Carrier's letter of August 12, 1957.

(b) The Carrier violated Rules 18, 22, and 33 of the agreement when it refused to compensate the claimant for the services rendered and the actual expenses incurred on August 19, 1957, while attending the investigation improperly held at Pine Bluff, Arkansas.

(c) The Carrier now be required to exonerate the claimant of the charges placed against him and to withdraw the demerits assessed in Carrier's letter dated August 27, 1957, and that claimant Carter be allowed compensation for the exact hours he performed service on August 19, 1957, at the overtime rate, and actual expenses incurred on same date. [Carrier's File No. PR-76291]

EMPLOYEES' STATEMENT OF FACTS: Under date of April 22, 1957, the Carrier issued Advertisement No. 7, to All Signal Employees, advertising for bids a position of Signal Maintainer, with headquarters at Rector, Arkansas. See page 3 of Brotherhood's Exhibit "A" attached hereto.

The claimant, H. J. Carter, who at the time of the issuance of Advertisement No. 7 was residing at Paragould, Arkansas, submitted bid for the position and being the senior bidder for the position was awarded the position by Assignment No. 7 dated May 13, 1957.

not return to home station on the same day will be allowed time for traveling or waiting in accordance with Rule 22 of this article. All hours worked will be paid for—straight time for straight-time hours, and overtime rate for overtime hours. Actual expenses will be allowed at the point to which sent if meals and lodging are not provided by the Carrier."

"Rule 33. ATTENDING COURT—INQUESTS, ETC.: Employees attending court or inquests at the request of the management will be compensated equal to what they would have earned on their regular assignment and if so used on days off duty, they will be allowed eight (8) hours pay at the straight time rate for each day so used. Actual expenses will be allowed while away from home station or headquarters. Any fee or mileage accruing for such services will be assigned to the railway company."

These rules do not apply, as claimant was not performing work as contemplated by Rules 18 and 22. Neither was he acting as a witness as contemplated by Rule 33. He was an employe under investigation. Clearly he is not entitled to payment provided in these rules.

VII

In conclusion the Carrier respectfully submits that the facts outlined show that the discipline was properly assessed and should not be disturbed, and that the payment claimed is not supported by the rules, and that the claim should be denied.

All data herein has been presented to representatives of the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: The record here covers claims of Signal Maintainer H. J. Carter as is specified in sections (a) and (b) of the Statement of Claim.

Claim (a) alleges a violation by Carrier of Rule 63, of the effective Agreement, in that Carrier on August 19, 1957, held an Investigation and Hearing at Pine Bluff, Arkansas, for an alleged violation of Rule 587, of the Rules and Instructions Governing Installation, Inspection, Maintenance and Repairs of Automatic Block System, Centralized Traffic Control System, etc.

Claims (b) and (c) cover allegations that Carrier violated the Agreement.

The provisions of Rules 18, 22, and 33 of the Agreement, for which claim is made for compensation and expense, while attending the Investigation and Hearing, and in addition to require Carrier to clear Claimant's personnel record of 25 demerits assessed against him for violation of Carrier's Rule 587.

The record before us here shows that a claim for time and expenses in attending the Investigation and Hearing were presented Carrier by Claimant on September 2, 1957. That on September 6, 1957, the said claim was denied by the Signal Engineer, on the property. No further action was taken on this claim by either the employe or the Organization until, April 29, 1958, when this docket was appealed to this Division. Under the National Agreement,

covering Time Limit Rules, of August 21, 1954, Article 7, Section 1 (b) provides that after a claim is disallowed, an appeal must be made in writing within 60 days of receipt of such disallowance by the Carrier. Failure to comply with such provision, the claim becomes closed. Further Carrier contends the Organization did not process such monetary claim in the usual manner up to and including the Chief Operating Officer of the Carrier, as provided by Section 3, First (i) of the Railway Labor Act. Such claim as alleged in the record before us for compensation and expense is hereby dismissed.

Since we are of the opinion the monetary claims here should be dismissed for procedural reasons, the only question before us now is:

Did the employe have a fair and impartial investigation and hearing on the charge by Carrier, that he violated the provisions of Rule 587, promulgated by Carrier? Carrier contends the employe was, under Rule 587, required to reside at the site of his assignment. His assignment as Signal Maintainer became effective May 13, 1957, at Rector, Arkansas, and Carrier contends he failed to move his residence to Rector at that time. June 13, 1957 Carrier requested information as to when he would have his living headquarters at Rector. Again on July 1, he was requested to advise Carrier when he would be living in Rector. On July 23, 1957, Carrier advised him, effective immediately, he must live at Rector to be available for calls. He advised Carrier on July 25, he had been unable to locate a house for his family, but had taken a room there, then he again went back to where his family resided in Paragould, so that he could take his children to school at Rector each day. The record further shows he did establish residence at Rector on August 13, 1957. From this evidence, and that offered on behalf of the Claimant, we cannot say the Claimant made a sincere effort to comply with the request to move his living quarters to Rector.

This employe had a fair and impartial investigation and hearing accorded him. Carrier has stated its reasons why the investigation and hearing was held at Pine Bluff. We find no rule that requires Carrier to hold such hearings at the place of assignment of the employe, and in view of Carrier's statement as to requirements of Rule 63 (b), it acted properly under the particular circumstances at the time.

The record here is not sufficient to require a sustaining award. There is no evidence here that Carrier acted in an arbitrary or capricious manner toward the Claimant, and Carrier's request was fair and reasonable.

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

That the parties waived oral hearing:

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 Carrier did not violate the Agreement.

AWARD

Claim dismissed in part, and denied in part, in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of April 1963.