



Award No. 15006

Docket No. MW-14663

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

ARTICLES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it failed and refused to allow the appeal to General Manager R. G. Johnson on September 13, 1963, in behalf of Section Foreman L. P. Canode, after he failed to render a timely decision thereon within the time limits set forth in Article V of the August 21, 1954 Agreement. (Carrier's File M-982-64 E-1335).

(2) Section Foreman L. P. Canode now be reinstated to his former position as foreman on Section No. 5, Rochelle, Illinois, and paid the difference between what he has received as a section laborer and what he would have received as a track foreman had he not been demoted from his foreman's position on August 12, 1963, because of the violation referred to in Part (1) of this claim.

OPINION OF BOARD: On August 12, 1963, Mr. L. P. Canode, Section Foreman of Section No. 5, Rochelle, Illinois, was demoted to a section laborer because Carrier alleged he failed to protect track under his supervision. At his request, under Rule 53 of the Agreement, an investigation was held in the Superintendent's office on August 21, 1963. The discipline action was sustained and Mr. Canode received notification of this decision in a letter dated August 28, 1963, signed by C. J. Miller, Superintendent.

On September 13, 1963, the Brotherhood addressed a letter to R. G. Johnson, General Manager, in which it stated that the evidence produced in the investigation did not warrant Mr. Canode's demotion, and appealed the case for further consideration with a request that Mr. Canode be reinstated to his former position and be paid the difference between what he received as section laborer and what he would have received as track foreman. A copy of this letter was forwarded to Mr. Miller.

A conference was held in the General Manager's office on October 21, 1963, and in a letter written on the same day Mr. Johnson informed the Brotherhood that a decision would be forthcoming. The General Chairman, on November 27, 1963, sent a letter to the General Manager advising him that he received no reply indicating that the claim was declined or granted and therefore he was requesting that the claim be allowed under the time limit provisions of Article V of the August 21, 1954 National Agreement. In a letter dated December 5, 1963, the General Manager replied that he found it unnecessary to make a denial since no claim was ever presented to Mr. Miller.

Carrier contends that Brotherhood did not initiate the claim properly according to the provisions of a letter of agreement of September 6, 1957, which designates the Superintendent as the initial officer with whom a claim is to be filed. It alleges that no claim for reinstatement to service as foreman was presented to Superintendent Miller and therefore it concludes "the only violation of the provisions of Article V of the August 21, 1954 Agreement that occurred in the handling of this dispute is that which was committed by the Organization".

The conference held in the office of the General Manager in response to Brotherhood's letter of September 13, 1963, indicates that the General Manager regarded the letter as an appeal by an employee dissatisfied with discipline action taken after a hearing. He wrote after the conference, "I will look into this case further and advise you later as to what my decision will be". Only after Brotherhood wrote to him on November 27, 1963, pointing out that it did not receive a decision and therefore Carrier did not comply with the time limit provision of Article V, did he advise the Brotherhood that the claim was not properly presented to the Superintendent.

We find that Brotherhood, after a hearing held in accordance with Rule 53, timely appealed the case under Rule 54 of the Maintenance of Way Employees Agreement. Although the letter of agreement of September 6, 1957, designates the Superintendent as the officer with whom a claim is to be initiated, it does not set aside the method of handling discipline cases as prescribed under Rules 53 and 54.

Because Carrier failed to respond to the claim within 60 days under Article V 1(a) of the National Agreement of August, 1954, we hold that Claimant L. P. Canode is entitled to compensation to the amount equal to the difference between what he received as section laborer and what he would have received as track foreman up to December 5, 1963, the date of Carrier's denial letter.

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 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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of December 1966.

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