



Award No. 18130
Docket No. SG-18490

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN
NEW YORK, SUSQUEHANNA AND WESTERN
RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the New York Susquehanna and Western Railroad Company that:

(a) Carrier violated Article V, the time limit provisions, of the August 21, 1954 National Agreement, when Signal Supervisor M. F. Whitaker failed to render decisions on claims and Chief Engineer Charles P. Dieckhoff failed to render decisions on appeals of such claims submitted to them respectively by Local Chairman James T. Walsh and General Chairman W. D. Wilson on behalf of Assistant Signalman William Penc, Assistant Maintainer Edward Nieweglowski, and Signalman James T. Walsh.

(b) Carrier be required now to comply with the mandatory requirements and provisions of Article V, Section 1(a), (b), and (c), of the August 21, 1954 National Agreement and allow as presented the following claim:

"In reference to your letter of Feb. 9, 1968 to William Penc, Ass't. Signalman, North Hawthorne, N.J. regarding his being furloughed effective at the end of tour of duty, Friday Feb. 16, 1968. This is in further violation of the February 7, 1965 Job Security Agreement. This man was furloughed Nov. 1, 1967 and a claim was made in his behalf at that time. He was brought back to work Dec. 15, 1967, therefore, I claim William Penc, who is a protected employe, should receive full compensation under the above mentioned agreement.

Please acknowledge."

(c) Carrier be required now to comply with the mandatory requirements and provisions of Article V, Section 1(a), (b), and (c), of the August 21, 1954 National Agreement and allow as presented the following claim:

"This claim is being presented in behalf of Edward Nieweglowski, whose position as Ass't. Maintainer, Signal Section No. 1, Hackensack, N.J. was abolished in Bulletin No. 9-68 dated April 22, 1968, effective April 29, 1968, account of reduction in business and revenue.

This abolishment is a violation of the Feb. 7, 1965, Job Security Agreement. Since Edward Nieweglowski is a protected employe working at the signalmen rate of pay, I claim he should receive full compensation under the above mentioned agreement.

Please acknowledge and advise when this claim will be allowed."

(d) Carrier be required now to comply with the mandatory requirements and provisions of Article V, Section 1(a), (b), and (c), of the August 21, 1954 National Agreement and allow as presented the following claim:

"This is in reference to my being laid off at close of business May 15, 1968, because of abolishment (Bulletin 12-68) and displacement, due to reduction of business and critical financial status of the company. I claim that this is in violation of Job Security Agreement, I claim I am entitled to all compensations and benefits due to me under the provisions of this agreement.

Please acknowledge and advise."

EMPLOYEES' STATEMENT OF FACTS: As a result of force reductions in October, 1967, Mr. William Penc was furloughed, and Mr. Edward Nieweglowski was reduced from a Signalmen Position to an Assistant Signal Maintainer position. Claim was filed on their behalf for compensation under the February 7, 1965 Agreement. As Carrier failed to handle those claims in accordance with Article V of the August 21, 1954 Agreement, they were submitted to this tribunal, where they are now pending under Docket No. SG-18241. Subsequent force reductions resulted in the instant dispute, as explained below.

Claimant Mr. Penc was recalled to service in December, 1967, but was again furloughed effective at the end of tour of duty Friday, February 16, 1968. (Brotherhood's Exhibit No. 1(b).) A claim for full compensation under the February 7, 1965 Agreement was filed on his behalf February 16, 1968. (Brotherhood's Exhibit No. 2(b).)

Claimant Edward Nieweglowski was furloughed effective at the end of tour of duty Monday, April 29, 1968. (Brotherhood's Exhibit No. 1(c).) Claim on his behalf was initiated April 30, 1968. (Brotherhood's Exhibit No. 2(c).)

Claimant James T. Walsh was furloughed effective at the end of tour of duty May 15, 1968. (Brotherhood's Exhibit No. 1(d).) Claim on his behalf was initiated May 16, 1968. (Brotherhood's Exhibit No. 2(d).)

Claims were initiated with the Signal Supervisor, Mr. M. F. Whitaker, who neither acknowledged receipt of the claims nor denied them within the time limit provisions of Article V of the August 21, 1954 Agreement. The Local Chairman then advised Mr. Whitaker the claims should be allowed by default. Brotherhood's Exhibits Nos. 3(b), 3(c) and 3(d).

All of these claims have been discussed between the General Chairman and Director of Personnel and were subject to denial at a meeting October 18, 1968 and denial confirmed on that date.

OPINION OF BOARD: This dispute grows out of force reductions made by Carrier in February, April and May 1968. Claimant Penc was furloughed on February 16, 1968; Nieweglowski on April 29 and Walsh on May 15, 1968. Claims were timely submitted by the Local Chairman to the Signal Supervisor that the reduction in force constituted a violation of the provisions of the Job Security Agreement of February 7, 1965. The Signal Supervisor failed to deny the claims. The claims were then appealed by the General Chairman to the Carrier's Chief Engineer who also failed to deny them and from there they were appealed to the Director of Personnel who denied them on October 18, 1968.

The question of whether a violation of the Job Security Agreement of February 7, 1965 occurred is not before us. The only claim presented here is the claim that Carrier failed to deny the claim within the time specified in Article V of the Agreement of August 21, 1954. Carrier's defense in this respect is limited to an assertion that there was a mutual unwritten understanding that time limits would not be invoked. No evidence whatever is submitted in support of this contention. Therefore, we hold that Carrier violated Article V of the August 21, 1954 Agreement.

With respect to reparation as a result of the violation, we note from the record that this dispute has also been submitted to the February 7, 1965 Disputes Committee and has been disposed of by that tribunal. We will sustain payment from the date of furlough to the date the claims were denied on October 18, 1968 in line with National Disputes Committee Decision No. 16 dated March 17, 1965, except that this award is not intended to result in double payment to Claimants.

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 to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1970.

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