

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19553
Docket Number MS-19475

William M. Edgett, Referee

PARTIES TO DISPUTE: (H. G. Skidmore
(George P. Baker, Richard C. Bond, Jervis Langdon, Jr.,
(and Willard Wirtz, Trustees of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: NOTICE NO. 1 - This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an ex parte submission on the 28th day of May 1971 covering an unadjusted dispute between Mr. H. G. Skidmore and the Penn Central Transportation Company involving the question:

Has the Agreement entered into by and between the Pennsylvania-New York Central Transportation Company and Clerical Other Office, Station and Storehouse Employees of the Pennsylvania-New York Central Transportation Company represented by Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees been abrogated and have my rights, rules, working conditions, fringe benefits or privileges as guaranteed by the Employees Pre-Merger Protective Agreement contract been abridged by the officials of the Penn Central Transportation Company due to Mr. E. J. Gaynor's demand, in the presence of my co-workers, that I wear a tie at all times and because of his refusal to grant me a hearing on my request? Also the action and refusal of Mr. K. F. Schwab and Mr. N. P. Patterson in not granting me an appeal or fair and impartial investigation?

OPINION OF BOARD: Claimant was instructed by Carrier to wear a tie in the office. He objected, but complied with Carrier's instructions. At the same time he requested a hearing, claiming Carrier was required to give him one by Rule 7-A-1 which reads:

"RULE 7-A-1 - UNJUST TREATMENT

An employee who considers himself unjustly treated, otherwise than covered by these rules, shall have the same right of investigation, hearing on appeal and representation as provided in Rule 6-A-1, if written request which sets forth the employee's complaint is made to his supervising officer within 30 calendar days of cause of complaint."

His request for a hearing on Carrier's demand that he wear a tie was filed on June 23, 1969. He continued to press that request, when a hearing was not granted to him, through all steps in the grievance procedure. In addition he has argued, before this Board, the merit he sees in his complaint.

The Board will not deal with the substance, if any, of Claimant's protest against the requirement that he wear a tie. His clearly stated request for a hearing under Rule 7-A-1 and Carrier's refusal to grant a hearing are another matter.

Carrier advances several reasons for its refusal to grant Claimant a hearing. First it says that the grievance is without merit and does not involve the interpretation or application of Agreements concerning rates of pay, rules or working conditions. Although it is by no means clear that the complaint Claimant makes does not involve working conditions, the salient point is that Rule 7-A-1 gives him a right to a hearing when he "considers himself unjustly treated, otherwise than covered by these rules." The merit, or lack of merit, of Claimant's case is irrelevant. The Rule gave him the right to be heard. He filed a request for a hearing as required by the Rule. Carrier denied his request. The merit of his case was to be determined after the hearing. Carrier put the cart before the horse when it pre-judged his case without granting the hearing which is clearly specified in Rule 7-A-1.

Nor does it aid Carrier's case to assert that it could deny, in summary fashion, Claimant's request for hearing because the subject matter does not involve the interpretation or application of the Agreement. The issue before this Board, whether Carrier was required by Rule 7-A-1 to grant a hearing to Claimant upon his timely request, is clearly a claim of Agreement violation which is properly before the Board. Rule 7-A-1 by its express terms covers the question of hearing for "An employee who considers himself unjustly treated, otherwise than covered by these rules." Here is a clear statement that an employee who has a claim that he was unjustly treated is entitled to a hearing even though his claim does not allege a specific violation of the Agreement. Carrier cannot rely on an alleged defect in the merit or character of his request to deny him the hearing. What Carrier's response may be to the alleged unjust treatment, after it follows the agreed upon procedure is a matter we do not deal with here.

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

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That the Agreement was violated, as discussed in the Opinion.

A W A R D

1. That part of the claim alleging that Carrier violated the Agreement by demanding that Claimant wear a tie is dismissed, without prejudice to Claimant's right to raise that question in a hearing conducted as required by Rule 7-A-1.

2. Carrier violated the Agreement when it failed to grant Claimant a hearing under Rule 7-A-1 and that part of the claim which so states is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. G. Killen
Executive Secretary

Dated at Chicago, Illinois, this 10th day of January 1973.