

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19964
Docket Number SG-19504

C. Robert Roadley, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railroad Signalmen
(
(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:

Claim of the General Committee of the Brotherhood of Railroad Signalmen on the former Pennsylvania Railroad Company that:

(a) The Company violated Article 6, Section 1(a) of the current Agreement when, on March 25, 1969, J. C. Foley and W. R. McGregor, Helpers C&S, were held out of service for thirteen (13) days: March 25, 26, 27, 28, and 31, 1969; also April 1, 2, 3, 4, 7, 8, 9, and 10, 1969, for alleged charges as shown on Form 250 dated March 31, 1969, which was signed by R. A. Kendall, Division Engineer.

(b) Mr. Foley and Mr. McGregor be reimbursed for all days that they were suspended from service due to alleged charges as related in claim (a) above; also be paid at the punitive rate of pay for all overtime work made by the C&S forces of which they were a part. (Carrier's File: System Docket No. 694-Williamsport Division Case NS-51)

OPINION OF BOARD:

Both claimants in this case were held out of service pending investigation and trial for allegedly failing to begin work as directed by their supervisors and for leaving their work assignments without permission on March 24, 1969. By separate letters dated March 31, 1969, the claimants were notified to attend separate trials on April 8, 1969, the trials were postponed until April 10, 1969, at the request of the Organization Vice Chairman, at which time they were held. Claimants were returned to duty on April 11, 1969. Claimants were notified on July 11, 1969 that discipline of suspension of thirteen (13) days was imposed for the offense referred to above, time held out of service to apply. The subject claim was initially submitted to the claimants immediate supervisor on June 6, 1969.

Before proceeding with our consideration of the merits of the claim we are obliged to give consideration to the Carrier's allegation that the subject claim is procedurally defective for dates claimed up to and including April 7, 1969. account the claim was not timely submitted as provided in Article V of the August 21, 1954 Agreement. Additionally, Carrier avers that the claim is further defective in that no appeal has ever been submitted by or for the claimants regarding the assessed discipline, pursuant to Article 7, Section 1 (a) of the Agreement.

Article V of the National Agreement dated August 21, 1954 states, in pertinent part as follows:

- "1. All claims or grievances arising on or after January 1, 1955, shall be handled as follows:
 - (a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based."

The occurrence, subject of the instant claim, took place on March 24, 1969 and the claim was presented to the Carrier officer on June 6, 1969. It is obvious that the portion of the claim covering the dates between March 25, 1969 and April 7, 1969, inclusive, is defective in that the claim was not presented, in so far as that portion of it is concerned, within the sixty day time limit quoted above.

Award 16014, among others, stated in pertinent part:

".....This case falls within the provisions of Article V of the August 21, 1954 Agreement..... Section 1 (a) of that Agreement is clear, precise and unambiguous. The instant claim was not presented to the Carrier within the sixty day time limit; hence we must accordingly dismiss it for lack of jurisdiction. Awards 8886 (McMahon, 12490 (Ives) inter alia."

We will, accordingly, dismiss that portion of the claim covering all claim dates between March 25 and April 7, 1969, inclusive, for the same reason as set forth in Award 16014.

A further review of the record before us shows that the joint statement of the parties, dated May 22, 1970 contains the following statement by the Organization:

"We are of the opinion that this claim should be sustained in its entirety except the offer to withdraw April 9 and 10, 1969 from the claim."

The dates of April 9 and 10, 1969 were set out because this is the period covering the postponement in the trial as requested by the Organization. Consequently, the only remaining portion of the instant claim covers solely the date of April 8, 1969.

The record shows that, as a result of the trial, the claimants were disciplined to the extent of being suspended for the period they were held out of service - 13 days. Article 6, Section 4(b), of the Agreement, specifically provides that time held out of service will apply against suspension.

Article 7, Section 1(a), of the Agreement, states in pertinent part:

"(a) An employee may appeal from discipline imposed on him if he does so in writing to the Superintendent within ten days from the date he receives notice of the imposition of such discipline, and if he so appeals he shall be given a hearing."

The claimants were notified on July 11, 1969 that the discipline of suspension had been imposed. The record shows that no appeal has been submitted by or for the claimants, as provided by the above quoted Rule, and therefore the discipline stands as imposed.

In view of the foregoing, and for the reasons set forth herein, we have no alternative but to dismiss the claim in its entirety.

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 claim is dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1973.