

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20657
Docket Number MW-20650

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Louisiana and Arkansas Railway Company)

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

(1) Trackman Moses Crockett shall be allowed eight hours' pay for each work day and holiday beginning with November 6, 1972 and continuing until he is reinstated and restored to service with seniority, pass and vacation rights unimpaired because of the Carrier's failure to hold and conduct an investigation in compliance with the procedural requirements of Rule 13-2 governing discipline (System File 013.31-131).

OPINION OF BOARD: On November 6, 1972, Claimant was removed from service as a result of an alleged failure to work overtime.

Rule 13-1 requires that employees who are disciplined or dismissed be advised, in writing, of the cause for such action.

Rule 13-2 states:

"...If a hearing is necessary to determine the facts, it will be given promptly..." (underscoring supplied)

On November 6, 1972, the Organization requested an investigation (as soon as possible) concerning the dismissal. The following day, Carrier acknowledged receipt of the request and stated that it would advise further concerning time, date and place.

On November 29, 1972, Claimant was advised that the formal investigation would be conducted on December 19, 1972.

Claimant was reinstated to service on December 4, 1972, without pay for time lost.

Thereafter (on December 18, 1972), the investigation was postponed to a later (unspecified) date.

On January 3, 1973, the instant claim was submitted. It noted that inasmuch as the investigation was not held within the time allotted by the agreement, "...at this late date, it cannot be justly held..." (underscoring supplied)

On January 24, 1973, Carrier noted that the investigation "... is still pending and will be rescheduled within the very near future."

The handling of the matter, on the property, indicates that the investigation was scheduled (and postponed) on three (3) occasions after January, 1973. There is some suggestion that the Organization contributed to this further delay. In any event, as of October 3, 1973, an investigation still had not been conducted in this matter.

This is a case of first impression concerning these parties and does not admit of easy resolution. Carrier points out that the Rules Agreement does not specify a time period within which a hearing must be conducted, and cites a number of Awards which fortify its admonition to us that the jurisdiction of this Board is limited to an interpretation of existing Agreements; but does not permit us to alter Agreements and write specific time limit provisions. But, the cited Awards do not, in our view, resolve the controversy. We do have authority to interpret that portion of the Agreement which requires Carrier to afford a "prompt" hearing. Implicit in that language is the understanding that under certain circumstances a certain number of days of delay might constitute a violation; whereas other circumstances could dictate a different result. See Award 14223.

"Prompt" does suggest action without undue delay. Carrier's delay (until November 29, 1972) in scheduling the hearing, appears to be rather dilatory - and its decision to defer the investigation (at a time when Claimant was out of service) until December 19, 1972 is further indication of a degree of disregard for its obligations under Rule 13-2. We do note, however, that neither Claimant nor the Organization raised any objection to the date of the initial hearing. Thus, if the hearing had been held as originally scheduled, we would be inclined to disregard the claim. But, here, the hearing (which was unduly delayed) was postponed at the last minute and not specifically rescheduled.

We do not concur with Carrier's contention, as stated in its Ex Parte Submission, that once the discipline had been reduced to a suspension, the need for prompt handling became less demanding. Rule 13-2 requires "prompt" action concerning suspensions as well as terminations.

Under this record, limited solely to the facts and circumstances recited therein, we feel that Rule 13-2 was violated, and we shall sustain the claim concerning the period November 6, 1972 through the date Claimant was reinstated (December 4, 1972).

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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.

A W A R D

Claim sustained as stated in Opinion of Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 21st day of March 1975.