

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20968  
Docket Number CL-20895

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employees  
(  
(Western Weighing and Inspection Bureau

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-7676) that:

The Third Division, National Railroad Adjustment Board on July 27, 1973 ordered the Bureau to make effective Award Number 19871 by restoring claimant Donnelly to Bureau service with all rights unimpaired. Mr. Donnelly requested to return to Bureau service on Monday, August 27, 1973 and the Bureau would not allow him to return until Tuesday, September 4, 1973. It is our position the Third Division Board intended for the Bureau to restore the claimant to service immediately for the reason if this was not their intention they would have specified an order date.

We are therefore filing this claim on behalf of Mr. Donnelly for the daily rate of his Position No. 296, Inspector, at \$40.43 per day for August 27, 28, 29, 30, 31 and September 3, 1973.

OPINION OF BOARD: Claimant had been discharged from service of Carrier in May 1971 following an investigation into charges of failure to protect his assignment, absence without authorization and insubordination. His claim for restoration to service resulted in our Award 19871 dated July 27, 1973 wherein we found Claimant culpable on the charges but held that dismissal was not warranted in all of the circumstances. Thus, our Award in that case was as follows: "Claimant shall be restored to service with all rights unimpaired but without compensation for time lost." Consequently, a Board Order to accompany Award 19871 was issued July 27, 1973 reading as follows:

"The Western Weighing and Inspection Bureau is hereby ordered to make effective Award Number 19871, made by the Third Division of the National Railroad Adjustment Board (copy of which is attached and made part hereof), as therein set forth; and if the Award includes a requirement for the payment of money, to pay to the employee (or employees) the sum to which he is (or they are) entitled under the Award on or before XXXXXXXXXXXX.

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Thereafter, the Carrier, by letter dated August 13, 1973 notified Claimant of the Award and advised him as follows:

"You are hereby advised that we must have your advice as to whether or not it is your desire to return to Bureau Service. This reply must be received in this office no later than August 24, 1973."

Claimant responded by unsigned certified letter dated August 20, 1973 as follows:

"This is to advise that I plan to return to Bureau Service Monday, August 27, 1973, with all rights and benefits unimpaired."

Carrier responded to Claimant's reply on August 21, 1973 in a letter which reads in pertinent part:

"First, we cannot accept this letter as it does not have your signature. I have been advised by Assistant District Manager, Mr. W. M. Flemming, that in phone conversation with you it was understood that you would return to Bureau service on Tuesday, September 4, therefore, all arrangements have been made accordingly.

Will you, therefore, please furnish me with a signed statement, by return mail, advising that you will return to Bureau Service on September 4, 1973, according to verbal understanding with Mr. Flemming."

Claimant wrote again on August 23, 1973 reiterating his desire to report to work on August 27, 1973 and Carrier replied to this on August 24, 1973 as follows:

"This is to instruct you to report for work at 8:00 A.M. on September 4, 1973, at Bureau Office, 550 - 11th Street, Room 208, Des Moines, Iowa, in accordance with phone conversations, as well as our letter of August 21, 1973."

Claimant did report to work on September 4, 1973 and by letter dated October 8, 1973 Petitioner filed the instant claim for a day's pay for each work day between August 27 and September 3, 1973, inclusive. The gravamen of the instant claim is that Carrier should have returned Claimant to work on August 27, 1973 and that failure to do so was contrary to the Board's reinstatement order of July 27, 1973.

The central fact of this claim is that the Board's Order does not specify a date for the return of Claimant to work. Petitioner maintains that the Award contemplated "immediate" reinstatement and that Carrier was dilatory in compliance thereby violating Claimant's seniority rights under the Agreement and causing him to suffer the loss of six days' pay as well as a month's credit under the Railroad Retirement Act. Carrier responds that the lack of specific compliance date indicates the Board's intention that the Award be implemented with reasonable diligence allowing for correspondence and lead time to accommodate both Claimant's return to service and consequent displacement and possible bumping by other employees affected thereby. Carrier posits that it received the Award on August 6, 1973 and promptly undertook necessary details of implementation which consumed some 29 calendar days (i.e., August 6 - September 4) and argues that this is not unreasonable delay or dilatory compliance. Additionally, Carrier maintains that Claimant himself is responsible for eleven (11) of the days involved because he took eight (8) days to respond to Carrier's original letter and another three (3) to confirm that his unsigned letter of August 13, 1973 was authentic and reflected his desire to return to service of Carrier.

The only issue properly raised and joined in this case is whether Carrier took an "unnecessary" (i.e., an unreasonable) amount of time in complying with our Award 19871. It should be noted that we do not herein purport to interpret that Award as we have not been properly requested to do so. Nor may we amend, modify or expand the scope of that Award, neither under the guise of an interpretation nor pursuant to a related claim. Our Award stipulated no specific date for compliance hence we contemplated compliance within a reasonable time. There is nothing in the record to contradict Carrier's assertion that Claimant was returned to work within less than 30 days of the receipt of the Award. There is no evidence to show that Carrier stalled, intentionally delayed or engaged in dilatory tactics calculated to deprive Claimant of his rights under the Award. In short, there is neither clear and express evidence of scierter nor are there present herein facts and circumstances from which bad faith delay may be inferred. In all of the circumstances we cannot conclude that the Award was not implemented within a reasonable time. Accordingly, we shall deny the claim.

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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The record does not support a conclusion of violation of the Agreement or noncompliance with Award 19871.

A W A R D

Claim denied.

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ATTEST: A. W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1976.