

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22118
Docket Number MW-22086

Louis Yagoda, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Alton & Southern Railway Company

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

(1) The suspension of Caboose Supplyman J. W. Dace from January 26 through February 24, 1976 was without just and sufficient cause and on the basis of unproven and disproven charges (System File A&S 1976-1/K 1638-55).

(2) Superintendent Needham failed to give reasons for his denial decision dated February 18, 1976.

(3) As a consequence of either or both (1) and (2) above, the claimant shall be paid for all time (overtime and straight-time) lost during said suspension period."

OPINION OF BOARD: We find ourselves deterred from reaching consideration of the merits of the January 26, 1976 through February 24, 1976 disciplinary suspension imposed on Claimant by Carrier because of contention raised by Employees that, in the course of appeal procedures, Carrier's Superintendent failed to state the reasons for his notification therein that appeal was denied.

The chronology of this matter shows that Carrier, taking cognizance of a charge by its supervision, that on January 15, 1976, Claimant was derelict in his duty as Caboose Supplyman by failing properly to supply a caboose alleged to have been part of his expected responsibility, summoned Claimant to an investigation to take place on January 22, 1976 to determine the facts thereon.

After investigation was concluded, Carrier's Superintendent (Needham) sent Claimant, a notification, under date of January 23, 1976, that his reading and study of the transcript of investigation showed Claimant to have failed properly to supply the caboose in question on the date involved and that as a result thereof, Claimant would be subjected to 30 days actual suspension January 26th through February 24, 1976 inclusive.

Under date of February 13, 1976, General Chairman Bradford appealed by letter to Superintendent Needham from the discipline imposed on Claimant, specifying reasons for his position.

Under date of February 18, 1976, Mr. Needham wrote to Mr. Bradford, as follows:

Dear Sir:

"Reference to your letter of February 13, 1976 in connection with your appeal of decision made January 23, 1976 in assessing Mr. John W. Dace 30 days actual suspension.

This is to advise that your claim in behalf of Mr. Dace for eight (8) hours each day and all overtime to which he might have been entitled if he had been permitted to work these dates at track laborers rate of pay is respectfully declined."

By letter dated March 10, 1976 General Chairman progressed the appeal to Carrier's Director of Labor Relations and therein raised, among other matters, a contention that in his earlier response to the General Chairman, Superintendent Needham had violated Rule 20B of the Agreement between the parties by not giving a reason for disallowing the time claim made therein on behalf of Claimant.

Section 1 (a) of Rule 20B in specifying method and time limitations for claims or grievances states, in part:

"Should any such claim or grievance be disallowed, the carrier shall within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented."

We agree with Organization that Superintendent Needham's reply of February 18, 1976 contained nothing which could reasonably be construed as reasons for his disallowance of claim which said letter announced.

Carrier contends that inasmuch as the Superintendent had supported his suspension notice of January 23, 1976 by specifying reasons therefor in said letter, it was not necessary to repeat them again in the reply to appeal claim. But, Section 1 (a) of Article 20B makes it quite clear that a claim is to be regarded as having separate identity from a discipline notice and puts an obligation on the Carrier receiver thereof to display a posture of having given it consideration, as such, and supplying reasons for his decision on the request made. Such express mandate is not satisfied by a contention that inasmuch as the same individual has previously taken a position on and explained his reaction to the hearings in respect to the subject of said hearing, he need not now give reasons for rejection of an appeal therefrom, on the presumption that his reasons may be deduced or inferred from his earlier statement in the earlier letter. To depend on such inference would be to tolerate a transfer of an obligation for analysis, explanation and specific communication thereon put on management in this clause, to a conjectural presumption unfairly imposed on Claimant and nullify the obvious purpose of the clause to demonstrate full and responsive consideration of the claim raised.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 16th day of June 1978.