

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23313
Docket Number MW-23308

Josef P. Sirefman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(St. Louis-San Francisco Railway Company

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

(1) The Agreement was violated when the Carrier failed to schedule and hold an investigation which was timely and properly requested in conformance with Article 11, Rule 91(b)(1) (System File B-1791).

(2) As a consequence of the aforesaid violation, Claimant Carl W. Cantrell shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered beginning March 29, 1979."

OPINION OF BOARD: Claimant Carl W. Cantrell was employed as a trackman on April 12, 1976. He was injured on October 30, 1978 and required medical treatment. He did not return to work until March 29, 1979 when he was informed by the Carrier that he was no longer considered an employee because of his failure to obtain a leave of absence. On April 12, 1979 the General Chairman made a request for an investigation. In the April 27, 1979 Carrier response and throughout the subsequent written exchanges the Carrier maintained that the Claimant had no right to an investigation inasmuch as he failed to request a leave of absence before November 30, 1978 in accordance with Rules 183 and 87. No investigation was granted.

In its submission the Carrier maintains that Claimant's failure to obtain a proper leave of absence and to contact the Company for almost five months was in effect a voluntary quit and therefore there was nothing to investigate. As a corollary the union representation should have proceeded to the Director of Labor Relations as a non-disciplinary matter.

Sections (1) and (2) of Rule 91(b) of applicable agreement
read:

"(b) An employee who considers that he has been unfairly disciplined or dismissed, or who considers himself unjustly treated, shall be entitled to the following handling of his complaint:

(1) The employee, or the General Chairman acting in behalf of the employee, shall make written request for an investigation to the employee's immediate supervisor. Such request shall be made within 15 days from date of discipline, dismissal or alleged unjust treatment.

"(2) If a request for an investigation is made in compliance with requirements of paragraph (1) above, the employe shall be afforded a fair and impartial investigation. The investigation will be held within 15 days of the date of the request made by the employe or the General Chairman, unless a postponement is agreed upon by the Carrier and Organization representative."

As Referee Carter observed in a Third Division Award No. 22931 between the same parties "It is clear by its language that the provisions of Rule 91(b) are not restricted strictly to discipline cases, as the Carrier appears to contend. The Rule also applies to an employe who considers himself unjustly treated."

It appears that Claimant should have maintained communication with the Carrier over the months, over the extent of his injury and time required for recovery. However, to further quote from Award No. 22931 "at the same time we think that the Carrier was in error in not granting a hearing under Rule 91(b) when requested by the General Chairman."

In view of this record of inaction by both parties the appropriate remedy is that Claimant be restored to service with his seniority and other rights unimpaired, but without pay for time lost while out of service.

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 Employes involved in this dispute are respectively Carrier and Employes 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 in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 29th day of May 1981.

