

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23911
Docket Number MW-23836

Carlton R. Sickles, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
(Norfolk and Western Railway Company (Former Virginian Railway Co.))

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

(1) The suspension of sixteen (16) days imposed upon Trackman James Jordon was without just and sufficient cause, based upon unproven and disproven charges and in violation of the Agreement (System File V-D-812/MW-LY-79-17).

(2) Trackman James Jordon shall be compensated for all wage loss suffered; he shall be reimbursed for mileage (400 miles @15¢ per mile) and meal expense incurred and be compensated for travel time for traveling between his headquarters and Crewe, Virginia."

OPINION OF BOARD: This dispute involves the former Virginian portion of the Norfolk and Western Railway Company. Specifically, the question at issue is the application of Rule No. 24 - Discipline and Grievances.

Claimant, Trackman James Jordon, was held out of service on July 10, 1979. A charge was made and an investigatory hearing was held. Claimant was subsequently assessed discipline of sixteen (16) days suspension and returned to service on August 2, 1979.

By letter dated August 15, 1979, the General Chairman, on behalf of Claimant Jordon appealed the suspension and requested a hearing "... in accordance with Rule 24(d) of the former Virginian Agreement." At that same time, the General Chairman wrote:

"We hereby request that Mr. Jordon be paid for the sixteen (16) days actual suspension, plus four hundred miles, meal allowances at the prevailing rate, and travel allowance to and from Mr. Wilkinson's office."

Rule 24(d) of the applicable Rules Agreement reads as follows:

"(d) Appeal: An employe dissatisfied with the decision rendered as a result of the hearing, will be given ten (10) days in which to file written notice with the next higher official, with a copy to the official whose decision is appealed, and will be granted, within twenty (20) days, a hearing before the official to whom notice is given. If the employe desires further appeal, the right will be granted in succession up to the highest official designated to handle such cases, if notice of

appeal is given as above. Appeals will be granted and decisions rendered within a reasonable time after notice is filed. The right of the employee to be represented by one or more of the duly accredited representatives of his craft or class in such appeals is recognized." (Under-score ours for emphasis).

Claimant was not granted an appeal hearing. Rather, by letter dated September 13, 1979, the Carrier officer to whom the original appeal and claim for compensation was addressed denied the appeal and claim for compensation.

The Carrier has argued that Rule 24 of the Agreement was revised in May, 1955, to incorporate in paragraph (h) thereof the Claims and Grievances provisions of Article V of the August 21, 1954 National Agreement and that the time limits provisions therein should apply in this instant matter.

This Board has consistently held that the time limits which are set out in negotiated Rules Agreements will be strictly complied with. While this may appear to cause some injustices in some instances, it has been consistently applied against both sides.

In the instant dispute, the language of Rule 24(d) is clear and precise. It addresses itself specifically to employees dissatisfied with a disciplinary decision; it clearly says that an appeal therefrom must be initiated in writing within ten (10) days; and, it further demands that a hearing thereon will be granted within twenty (20) days. We do not view this as being in conflict with the "All claims and grievances" provisions found in Rule 24(h). Because the applicable provisions of Rule 24(d) were not complied with in this case, the appeal from the suspension of sixteen (16) days must be sustained without reaching the merits of the suspension.

However, the claim for reimbursement of mileage, meals and travel allowances as initiated in the General Chairman's letter of August 15, 1979, was timely denied under the expressed provisions of Rule 24(h). Inasmuch as Rule 24(e) specifically provides the remedy to employees who are exonerated of a charge in a disciplinary proceeding, that portion of part (2) of the Statement of Claim in this dispute is denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

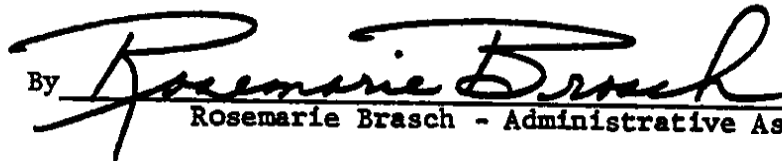
A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By



Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 8th day of June 1982.