

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward M. Hogan, Referee

Award Number 24063  
Docket Number MW-24479

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employes  
{ Southern Pacific Transportation Company  
{ (Eastern Lines)

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 14(b) (System File MW-81-39/302-5-A).

(2) As a consequence of the aforesaid violation, Claimant Richard A. Allen shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered beginning October 30, 1980."

OPINION OF BOARD: Claimant R. A. Allen was employed as a laborer for the Carrier prior to his dismissal on October 30, 1980. He was dismissed from the service of the Carrier for violation of Rules 801 and 802 of the Carrier. Claimant received notice of dismissal in a certified letter from the Carrier which he received and signed for on November 3, 1980.

On December 1, 1980, Carrier received a letter from the Organization requesting a hearing on the dismissal. Enclosed with the Organization's letter was a letter from the Claimant dated November 12, 1980, also requesting a hearing. The Carrier contends that the first time it had knowledge of the Claimant's letter of November 12, 1980, was when it received the December 1, 1980 letter (with the enclosure) from the Organization. The Carrier contends that the request for a hearing was made and received too late to be considered and that the time limit had expired to contest the dismissal.

Article 14(b) of the Discipline and Grievance Rule of the applicable Agreement reads as follows:

"An employee disciplined or who feels unjustly treated shall, upon making a written request to the officer of the Carrier authorized to receive same, within fifteen (15) days from the date of the advice, be given a fair and impartial hearing by an authorized carrier officer."

The copy of the November 12, 1980 letter of the Claimant attached to the December 1, 1980 letter of the Organization was unaddressed. The Board holds that this is not sufficient notice to the Carrier insofar as Article 14(b) of the Agreement specifically states and requires that the employe is to make written request to the officer of the Carrier authorized to receive same. The time limit had expired in which Claimant had the opportunity to contest his dismissal, and therefore the December 1, 1980 request of the Organization is not within the time period prescribed by the Agreement.

Prior opinions of this Board have held (Third Division Award 11721):

"...we must conclude that, by Claimant's failure to request a hearing within...days as required by the Agreement, the case was closed on the property and the claim cannot be sustained here."

The record indicates that the parties elected to use regular mail service for transmitting their correspondence involving claims and grievances, and inasmuch as both are subject to the same time limits under the Rule, they are both putting themselves in the peril that usage of the regular mail service are subject.

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

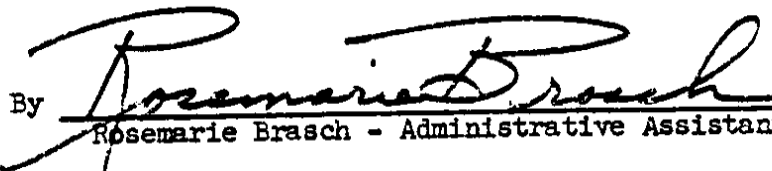
That the Agreement was not violated.

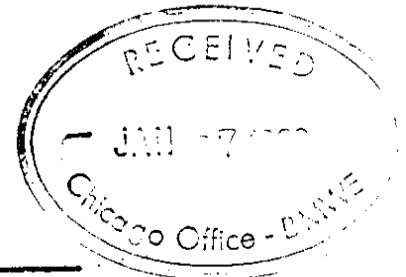
A W A R D

Claim denied.

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 14th day of December 1982.