

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24107
Docket Number CL-23782

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: { (Brotherhood of Railway, Airline and Steamship Clerks,
{ Freight Handlers, Express and Station Employees
(Missouri-Kansas-Texas Railroad Company

STATEMENT OF CLAIM: Claim of System Committee of the Brotherhood (GL-9294)
that:

(1) The Missouri-Kansas-Texas Railroad Company violated the current Rules Agreement between the parties, DP-451, including but not limited to Rules 26, 27, 30 and 32 when it failed to give Clerk W. L. Woodward, Glen Park Yard, Kansas City, Kansas, a precise notice for discipline assessed, held investigation at a time that caused her to lose time, did not afford her a fair and impartial investigation nor due process and they abused its discretion when it arbitrarily and capriciously suspended her from service for a fourteen (14) day period, June 17 through and including June 30, 1979, on unproven charges.

(2) Carrier shall be required to compensate Ms. Woodward for all time lost including any overtime she could have worked and shall clear her service record of the charges and discipline assessed.

OPINION OF BOARD: Claimant, W. L. Woodward, was a Clerk at Carrier's Glen Park Yard, Kansas City, Kansas facility at the time this claim arose. By letter dated March 16, 1979, Superintendent B. R. Musick advised Claimant that she would be suspended for twenty days (ten of which were deferred) because of alleged errors she made on March 13, 1979.

Claimant requested a formal investigation on March 23, 1979. The investigation was held on April 19, 1979. By letter dated, April 27, 1979, Superintendent Musick advised Claimant that based upon his investigation of the transcript she had violated Rules B and N of the Uniform Code of Operating rules by committing certain errors on March 13, 1979. Thus, he reaffirmed her guilt as well as the suspension previously imposed.

By letter dated May 4, 1979, Claimant informed Superintendent Musick that his decision was unacceptable to her and that she was appealing her claim to Division Chairman D. J. Behrens for further handling on her behalf.

On June 3, 1979, Division Chairman D. J. Behrens appealed Claimant's suspension to Carrier's General Manager, M. L. Janovec. From that date on the claim was handled in the usual manner on the property. It is now before this Board for adjudication.

The Organization maintains that the claim must be sustained on procedural grounds as well as on the merits. It argues that the claim was initially presented on April 19, 1979 during the hearing held to investigate the charges against Claimant. It notes that the denial of M. L. Janovec was dated July 12, 1979 or more than sixty days later, in violation of Rule 35 - Time Limits - Grievances.

In addition, the Organization maintains that Claimant was not given the precise reasons for the discipline assessed in violation of Rule 26.

Fuethermore, according to the Organization, Carrier's insistence that the Claimant be the first witness to testify at the hearing resulted in the denial of an impartial and fair hearing for the Claimant. Since this was a disciplinary case, Carrier should have offered its evidence and witnesses first.

The Organization's final procedural argument is that Carrier improperly caused the Claimant to lose time from work when it scheduled the hearing on April 19, 1979, in violation of Rule 30.

As to the merits, the Organization asserts that the errors Claimant allegedly made on March 13, 1979 either were not in fact committed by the Claimant (if they were committed at all) or did not result in delays in delivery of goods. In sum, the Organization contends that a twenty day suspension simply was not warranted under the facts of this case.

Carrier, on the other hand, maintains that it is the Organization, and not itself, which has procedurally defaulted on this claim. According to Carrier, Claimant herself violated Rule 35(a) by failing to file her claim within sixty days of its occurrence with the properly designated Carrier officer. The claim arose on April 27, 1979, when Northern Division Superintendent Musick found that, based on the evidence adduced at the April 19, 1979 hearing, that Claimant was guilty as charged. According to Carrier, Claimant did not, within sixty days thereafter, file a claim with the Terminal Superintendent at the Kansas City facility, Carrier's designated officer to receive initial claims.

Carrier further contends that Claimant was given a fair and impartial hearing on April 19, 1979. It insists that it afforded Claimant all procedural protections.

As to the merits, Carrier asserts that the record conclusively establishes that Claimant did, in fact, commit the errors as charged. Thus, Carrier asks that this Board uphold its determination of guilt as well as the penalty imposed.

The rules which pertain to this dispute provide, in relevant part:

"Rule 26 - ADVICE OF DISCIPLINE ASSESSED

An employe who is disciplined shall be furnished with a letter stating the discipline assessed and the precise reason for same."

"Rule 27 - INVESTIGATION

An employee who has been in service more than sixty (60) days shall not be disciplined or dismissed without just cause and upon written request made upon the disciplining officer or agent, within ten (10) working days from the date of notification of discipline or dismissal, shall be given an investigation...."

"Rule 30 - INVESTIGATION AND WHEN HELD

Investigation shall be held when possible at home terminal of the employee involved and at such time as not to cause the employee to lose rest or time."

"Rule 35 - TIME LIMITS - GRIEVANCES

(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within sixty 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, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

We must conclude that the claim be denied on procedural grounds. Rule 35(a) is mandatory. It requires that a claim be initially presented, in writing, within sixty days of its occurrence to the "officer of the Carrier authorized to receive same". It is undisputed that the officer so authorized was the Terminal Superintendent at the Kansas City facility. He did not receive a written appeal within sixty days of its occurrence.

This is so regardless of what date constitutes the "occurrence" in this case, for the oral statement by District Chairman D. C. Behrens at the April 19, 1979 hearing cannot be converted into a written statement simply because the hearing was transcribed. The fact remains that the Organization simply did not file a written initial claim with the officer designated to accept same.

The Organization also asserted that there is a practice of not following time limits. However, it has not shown that Rule 35 (a) was relaxed in cases of this type. Without such record evidence there is no merit to the argument that the parties have waived the time limits.

We note that the facts of this case are in accord with those in Award 8383. There we concluded, "there was no notice to the Carrier instituting the grievance and therefore, there was a failure to properly present this claim and Carrier may raise that issue at any time".

For the foregoing reasons, we must deny the claim without reaching the merits.

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.

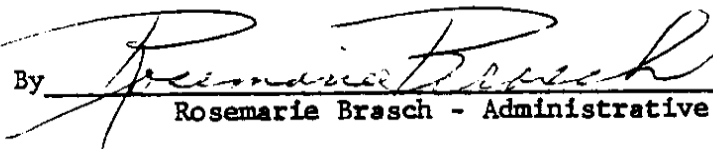
A W A R D

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 January 1983.

