

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24126
Docket Number SG-24266

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen
{ Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago and North Western Transportation Company that:

(a) That the carrier violated the agreement now in effect as amended, between the Chicago Great Western Railway Co. and the Brotherhood of Railroad Signalmen, particularly, Rule 62 (Investigation, Discipline) when on August 29, 1980 they denied the written request of Mr. Wm. J. Mee for an investigation as required by Rule 62.

(b) Rule 62(a) plainly says: An employee who has been in service more than sixty (60) days will not be disciplined or dismissed without an investigation when same is requested in writing. Mr. Mee was employed by the carrier since May 16, 1979.

(c) Mr. Mee was to report to the Sycamore (sic) Mtnrs. position on April 28, 1980, however; account of an on the job injury he could not report until May 13, 1980, at which time he was handed the following letter: 'You are hereby notified that your services are no longer required account of your absence from duty without proper authority, and your failure to report to work as Signal Maintainer at Sycamore, Ill., as per bulletin #7 (on former CGW).'

(d) On August 18, 1980, Mr. Mee requested in writing per Rule 62 CGW Agreement an investigation, which was denied by the carrier on August 29, 1980 which stated:

'There being no basis for your claim it is therefore denied in its entirety. The sixty day time limit has expired so this then closes out your claim.'

(e) The carrier now be required to compensate Mr. Mee for all time lost, and re-instate him to the position as Signal Maintainer at Sycamore, Ill. with all seniority and vacation, and insurance benefits." (Carrier file: D-9-1-73(Mee))

OPINION OF BOARD: Claimant entered service of Carrier on May 16, 1979 as assistant signal maintainer. On May 13, 1980 Claimant was notified that he was dismissed from service for allegedly being absent from duty without proper authority on April 28, 1980; on this date he was to report to Carrier as signal maintainer at Sycamore, Illinois as per bulletin #7 (of former Chicago Great Western (CGW)). On August 18, 1980 Claimant requested an investigation per Rule 62 of the CGW Agreement. On August 28, 1980 Carrier denied the request for an investigation on the grounds that the time limit had

expired and that Claimant's claim was "closed out". Rule 62 (a) reads, in pertinent part:

"An employee who has been in service more than sixty (60) days will not be disciplined or dismissed without an investigation when same is requested in writing ..."

An examination of the record before the Board shows that the single issue which must be resolved in this case is the reasonableness of the time limit which should be allowed, under Rule 62 (CGW), when an employee of the Carrier may file for an investigation after having been disciplined. Claimant was dismissed on May 13, 1980 and filed a request for an investigation on August 18, 1980; a delay of 95 days. While the position of the Board is that the present Award which it will issue should not be precedent-setting, it admits to considerable consternation when it tries to understand, given the evidence presented to it, why the Claimant waited over 90 days to apply for potential relief. The rule of reason which must often play a role when interpreting general language in collective bargaining agreements suggests that some lesser period of time, i.e. not more than 60 days, be more than sufficient in a case like this and that for Claimant to wait 95 days to ask for an investigation shows unnecessary negligence. Under these circumstances, the Board cannot sustain the claim.

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 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.