NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24485
THIRD DIVISION Docket Number CL-24564

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Chicago Union Station Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9575) that:

1. Carrier violated the provisions of the effective Clerks' Agreement when it failed to render a decision in appeal taken with the General Manager of the Carrier on September 11, 1981, within the sixty (60) day time limit provided for in Rule 26.

2. Carrier shall now be required to compensate Henryka Rusniak for all time lost as a result of her suspension from service, including the time she was improperly withheld from service pending the hearing and that her record shall be cleared of the charges placed against her.

OPINION OF BOARD: Organization claim is based solely on alleged procedural defect as this relates to application of Rule 26 of current Agreement. After Claimant, Henryka Rusniak, received notice on May 14, 1981 to attend an investigation on May 18, 1981 to ascertain her responsibility, if any, in connection with her allegedly having been found sleeping while covering her assignment on May 8, 1981, she was notified on May 20, 1981 that she had been found guilty as charged and was assessed fifteen (15) working days' suspension without pay. On June 18, 1981 the Organization, over the signature of the local chairman, appealed the discipline to the Company's General Supervisor of Building Services. On August 14, 1981 appeal was declined by same. On September 11, 1981 a second appeal was addressed by the Organization to the General Manager of the Company. The Company purportedly then answered this appeal by letter on November 5, 1981 which the Organization states it never received. By date of November 20, 1981, the Organization purportedly sent a letter to the Company stating that the time limits as stipulated in Rule 26 had been violated and that claim should be allowed in accordance with this violation. It is the Company's position that it had not received this piece of correspondence. A conference was held between the parties on December 9, 1981 at which time the appeal was again denied. By letter dated December 10, 1981 the Organization discussed the substance, from its point of view, of the conference held on December 9, 1981 and requested claim allowance on procedural grounds. By letter purportedly sent on December 22, 1981 the Company denied request for settlement on the grounds that the denial reply had been properly made on November 5, 1981 in accordance with time limits of Rule 26. Organization further states that it never received correspondence of December 22, 1981.

The Rule in question reads as follows:

"Rule 26 - Time Limits - Grievances

Section 1.

(a) All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Company authorized to receive same, within sixty (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 Company shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employe 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 Company as to other similar claims or grievances.

(b) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within sixty (60) days from receipt of notice of disallowance, and the representative of the Company shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed, but this shall not be considered as a precedent or waiver of the contentions of the employes as to other similar claims or grievances. It is understood, however, that the parties may, by agreement, at any stage of the handling of a claim or grievance on the property, extend the sixty (60)-day period for either a decision or appeal, up to and including the highest officer of the Company designated for that purpose.

(c) The requirements outlined in paragraphs (a) and (b), pertaining to appeal by the employe and decision by the Company, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Company to handle such disputes. All claims or grievances involved in a decision by the highest designated officer shall be barred unless within nine (9) months from the date of said officer's decision proceedings are instituted by the employe or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the nine (9)-months' period herein referred to."

A review of the record before the Board shows that the Organization denies having received not only the decisive declination letter of November 5, 1981, but also the letters of December 22, 1981 and an undated notarized statement accompanying this letter.* The Company, on the other hand, affirms not only that it sent all three documents by U. S. Mail, but it makes them part of the record accompanying its submission to the Board by means of exhibits. As an additional point, the Organization rejects validity of these three documents as part of the record before the Board on grounds that they were not part of the record on the property.

The evidentiary impasse as it relates to the instant case would normally be settled by this Board by reference to precedent cases dealing with conflicting testimony (Third Division Awards 21612; 23085 inter alia). Such prior Awards have always held that the Board would not substitute its own judgment in cases of conflicting testimony as long as Carrier position is not so devoid of probity that its acceptance would not be per se arbitrary and unreasonable. The issue at stake here is the reasonableness of the Company's affirmation that it sent three pieces of correspondence, in two separate letters, all of which Organization claims it never received.

The test of the reasonableness of Company position that it mailed the disputed correspondence, including the declination letter, must be put in the context of total record before this Board.

The total record before the Board in the instant case collectively points to a pattern of negligence on the part of the Company when processing grievance cases on the property. Since such is the case, it would be unreasonable for the Board to deal with this only as a conflicting testimony case and it would not be unreasonable for it to sustain 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 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.

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* Company denial of having received the Organization's letter of November 20, 1981 is nowhere confirmed by the Company itself in the record before the Board, but is found in Organization's December 10, 1981 letter to the Company which is part of the record.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of July 1983.

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