

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24623  
Docket Number CL-24834

Robert Silagi, Referee

PARTIES TO DISPUTE: ( Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
( The Baltimore and Ohio Chicago Terminal Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9654) that:

(1) Carrier violated the Agreement between the Parties when it failed to comply-with Rule 47 of the Clerk-Telegrapher Agreement following two (2) investigations held February 20 and March 5, 1981, because of alleged misconduct of Mr. N. Lakich, Jr., Chicago, Illinois, an Extra Board employe, and

(2) In that Carrier failed to comply with the propers (sic) of the controlling Agreement Rule, Carrier shall now be required to allow eight (8) hours' pay to Claimant N. Lakich, Jr., for each date of February 20 and March 5, 1981.

OPINION OF BOARD: This case involves the application of Rule 47 of the Agreement which contains the procedures followed in disciplinary matters. The applicable portions of Rule 47 are:

*Investigation and Discipline*

"(a-1) An employe who has been in the service more than ninety (90) days shall not be disciplined or dismissed without a fair and impartial investigation. He may, however, be held out of service pending such investigation. At a reasonable time prior to the investigation, such employee shall be notified in writing of the precise charge against him, and he shall have reasonable opportunity to secure the presence of necessary witnesses and a representative if desired. The investigation shall be held within ten (10) days from the date when charged with the offense or held from service, and written decision will be furnished the employee within thirty (30) days after completion thereof."

Exoneration

"(a-6) If the final decision decrees that the charge against an employee was not sustained, the record shall be cleared of the charge. If suspended or dismissed, the employee shall be reinstated with all rights unimpaired and compensated for time lost less earnings made in other employment during time out of service. If the employee is suspended, the suspension shall date from the time he was taken out of service."

On February 13, 1981, while on a service road covered with snow and ice, Claimant drove a company vehicle into a ditch. That same day he was charged with improper operation of the vehicle and the removal of certain scale tickets from company property without authority. An investigation hearing was conducted on February 20 and March 5, 1981 and concluded at 3:15 P.M. on the later day. No written decision was ever rendered, however, Carrier asserts that Claimant was found guilty of both charges. Carrier therefore issued a verbal reprimand to Claimant.

The Brotherhood contends that Carrier violated the Agreement in that after conducting a formal disciplinary investigation under Rule 47, it failed to issue a "written decision" as required by the Rule. Carrier argues that it complied with the Rule by holding a fair and impartial hearing; that based upon the record of the hearing Claimant was found guilty of the charges; and that the discipline of a verbal reprimand is indicative of its compassion, consideration and leniency toward Claimant. In effect Carrier argues that failure to provide a written decision within the time limit was a technical defect amounting to harmless error. The Brotherhood dismisses these arguments as irrelevant to the fact that Carrier neglected or failed to furnish to Claimant a written decision within the time limit specified in Rule 47(a-1). We agree.

The Rule is mandatory. Carrier has 30 days in which to render a written decision. There is no authority within the agreement to extend the time in which to issue a decision or to make it orally. This Board is not authorized to revise agreements by holding that clear mandates thereof may be ignored at the convenience of either party, Award 8160 - Bailer. See also Third Division Awards 12559 - Dorsey; 11019 - Ray; 10035 - Daly; 3697 - Miller; 3502 - Douglas; 2590 - Blake. (When Carrier failed to make its decision within the stipulated time it had the effect of exonerating the Claimant on the charge preferred, Award 5472 - Carter.)

We turn now to the second part of the claim wherein the Brotherhood demands 8 hours' pay for each of the two days on which the hearing was conducted. The record reveals that Claimant suffered no loss of pay by attending the hearings. Under Rule 47(a-6) Claimant's record must be cleared of the charges but he cannot be compensated for lost wages when in fact he lost none.

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 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

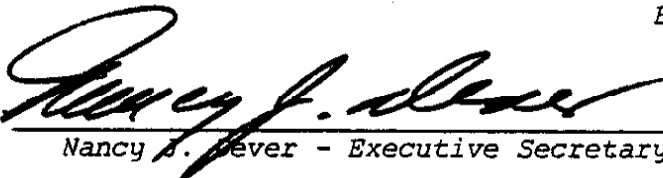
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest

  
Nancy J. Sever - Executive Secretary

Dated at Chicago, Illinois this 13th day of January 1984.