

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25459
Docket Number MW-25293

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Detroit, Toledo and Ironton Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The claim* as presented by General Chairman J. L. D'Anniballe on April 21, 1982 to Division Engineer A. E. Haywood shall be allowed as presented because the claim was not disallowed by Chief Engineer J. M. Letro (appealed to him on May 28, 1982) in accordance with Sections (a) and (c) of Rule 32 (Carrier's File 8365-1-141).

"*The letter of claim will be reproduced within our initial submission."

OPINION OF BOARD: On April 21, 1982, the Organization initiated a claim stating that the two Claimants had been improperly denied their status as furloughed employes when the Carrier removed them from seniority on April 21, 1982. The Division Engineer denied the claim in timely fashion by letter dated May 6, 1982. The claim was then timely appealed to the Chief Engineer on May 28, 1982. No reply was received from the Chief Engineer by August 9, 1982, at which time the Organization wrote to the Director of Labor Relations stating that the Chief Engineer had failed to meet the time requirement for reply and requesting that the claim be granted on this basis. The Organization requested that the Claimants "be reinstated with all rights unimpaired and that they be paid for all wage loss suffered by them beginning March 19, 1982".

On September 7, 1982, the Chief Engineer made an untimely reply, stating that the Claimants would be reinstated effective September 20, 1982, but "without compensation for any time they have been off".

Thus, there is no issue of reinstatement to seniority status as of September 20, 1982. The Organization nevertheless seeks compensation for "wage loss" prior to that date.

Rule 32 provides in pertinent part as follows:

"(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 60 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..."

"(c) The requirements outlined in paragraphs (a) and (b), pertaining to appeal by the employee and decision by the Carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Carrier to handle such disputes..."

The Carrier's representative (Chief Engineer) clearly failed to meet the requirement specified in Rule 32. No extenuating circumstances were noted. Based on the specific directive agreed to by the parties in Rule 32, the claim must be sustained "as presented". The Board has no discretion to rule otherwise.

The record gives no indication as to whether the Claimants, had they been in furlough status on and after March 19, 1982, would have been recalled to duty. Thus, the Board may not direct any specific compensation for wage loss. The parties may, however, readily determine whether Claimants would have been recalled from furlough prior to September 20, 1982, based on the Claimants' status just prior to March 19, 1982, in relation to the seniority status of other employes similarly furloughed and possibly recalled. Compensation for wage loss is appropriate only if the facts show that such recall would have been made. Otherwise, claim for wage loss is moot.

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

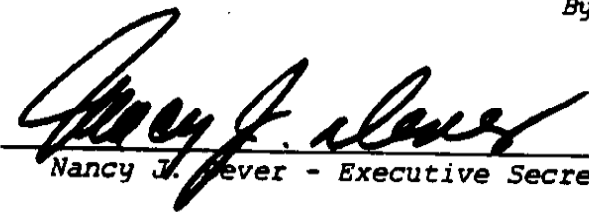
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May 1985.