

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26369
Docket Number MS-27117

John E. Cloney, Referee

(James Moreau
PARTIES TO DISPUTE: (
(Louisiana & Arkansas Railway Company

STATEMENT OF CLAIM:

"Please be advised that Mr. James Moreau is a member of Maintenance of Ways, Local 569, Jasper, Texas as a machine operator. This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of the intention of my client, Mr. James Moreau, to file an ex parte submission on or before June 13, 1986, covering an unadjustment dispute between my client and the Kansas City Southern Railway Company. It involves the question of whether or not Mr. Moreau was responsible for an accident which occurred on November 16, 1983 at Whelan Wood Yard, Louisiana and should have been dismissed from his duties with the Company."

OPINION OF BOARD: Claimant was one of six employees notified to attend an investigation to determine responsibility for an accident which resulted in a derailment that caused very extensive damage to equipment and personal injury, including the loss of one life. The investigation took place on December 8, 1983, at Shreveport, La.

Testimony at the investigation established that Claimant, a Machine Operator, was one of a crew operating three track machines on November 16, 1983. They were required to switch into what is known as the Whelan Wood Yard to permit a northbound train to pass. Thereafter the train ran into the Wood Yard, striking the machines, derailing and turning over five engines and seven cars.

There was abundant testimony at the hearing to establish the accident and derailment was caused by the switch remaining lined for the Wood Yard rather than being lined back for the main line and locked before the train was authorized to proceed. The Foreman of Claimant's gang stated he expected Claimant, who had lined the switch into the Wood Yard, to line the switch back for the main line. He stated Claimant walked back toward the switch after the machines were in the Wood Yard and then gave him a hand signal which he took as meaning the switch had been properly lined. The Foreman then spoke with the Engineer of the train by radio and authorized him to proceed.

Claimant testified he had lined the switch to the Wood Yard so the track machines could clear for the northbound train. He followed the two other machines in and then walked back to the switch but he "couldn't say" whether he lined it for the main track. He admitted it was his responsibility to do so and he believed the accident could not have happened if the switch had been so lined. He could only respond, "Not that I recall," when asked if he gave the Foreman a sign indicating he had locked and lined the switch.

By letter dated December 16, 1983, the Carrier notified Claimant:

"After careful review of the transcript of the investigation decision has been reached that you were responsible and that you are hereby dismissed from the service of this Company immediately."

The Foreman was dismissed also.

On January 17, 1984, the Organization appealed that Claimant be reinstated as a laborer "on a leniency basis." The request was denied on March 22, 1984. The Organization then appealed, again on a leniency basis, and the request was denied by letter of May 16, 1984.

On May 24, 1984, the Carrier wrote the Organization stating the Claim had been withdrawn in conference the previous day. This began a lengthy exchange of correspondence in which the Organization repeatedly insisted there was a misunderstanding and the Claim had not been withdrawn. Finally on February 11, 1985, Carrier agreed to a sixty day extension for progression of the Claim to this Board.

By letter of April 14, 1985, an Attorney served this Board with notice of intention to file an Ex Parte Submission on Claimant's behalf on or before May 15, 1985. The Ex Parte Submission was not filed until May 14, 1986. In it the argument is made that responsibility for the derailment rests with the Foreman, not with Claimant.

Carrier asserts the Claim is not properly before this Board. It points to Rule 14(c) of the Agreement which states in part:

"All claims ... involved in a decision by the highest designated officer shall be barred unless within 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"

The record shows the Claim was denied by Carrier's highest designated officer on May 16, 1984. Thereafter several months were spent in debating whether the Claim had been withdrawn. Shortly before expiration of the nine months within which the Claim had to be progressed to this Board, Carrier agreed to a 60 day extension. Within the sixty days notice of intention to file an Ex Parte Submission was served, but the submission was not filed until more than one year later. When filed, it raised arguments never made on the property and never the subject of a conference.

As the investigation revealed substantial evidence upon which Carrier could conclude Claimant's responsibility, and as there is no evidence the investigation was other than fair and impartial this Board, in keeping with firmly established precedent, will not disturb the Carrier's judgment. We are further of the view that the Claim is defective as untimely and as being a different Claim from that progressed on the property.

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

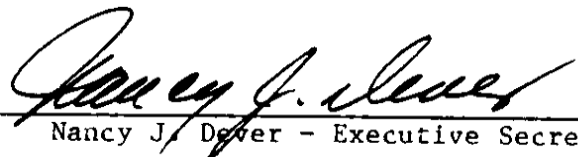
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1987.