

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26572
Docket Number MW-26997

Elmer F. Thias, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Burlington Northern Railroad Company
(formerly The Colorado and Southern Railway Company)

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

(1) The thirty (30) days of suspension imposed upon Grinder Operator G. Martinez for alleged failure to obtain authority prior to absenting himself from duty on July 12, 1984, was in violation of the Agreement (System File C-12-84/DMWD 85-225).

(2) Division Superintendent E. M. Martin failed to disallow the claim (appealed to him under date of September 13, 1984) as contractually stipulated within subsections A and C of Rule 42.

(3) As a consequence of either or both (1) and/or (2) above, the claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD The Claimant here was employed by the Carrier as a Grinder Operator. He was absent on July 12, 1984, and was subsequently charged by the Carrier for responsibility in that absence. An investigation was conducted on July 30, 1984, and following that, the Carrier imposed a disciplinary suspension of 30 days.

The Organization contests the merits of the discipline imposed and also offers objection to the manner in which the Carrier applied the Agreement in two succeeding and related events. We need only address the last issue raised by the Organization because our decision on it is decisive to the dispute.

On the date of September 7, 1984, the Organization presented claim on behalf of the Claimant to the Carrier's Division Superintendent. The Division Superintendent had been designated by the Carrier to receive claims of the kind here involved and the Organization's handling was in accordance with the provisions of Rule 42(A). Under date of October 5, 1984, the Claim was declined by the Carrier's Chief Engineer Maintenance. No declination has been received by the Organization from the Division Superintendent. In these particulars, the Organization contends that the disallowance of its Claim by the Chief Engineer Maintenance does not meet the requirements of Rule 42(A), which reads as follows:

"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."

The Organization maintains that the responsibility of disallowing claims is coexistent with the authority to receive claims. On the other hand, the Carrier's position is that Rule 42 does not stipulate which individual is required to reply to a claim, either allowing it or disallowing it. Both parties recognize that the issue presented here has come before the Board on prior occasions; they cite prior Awards in support of their respective positions.

The weight of authority supports the position advocated by the Organization. Thus, we will sustain the Claims.

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

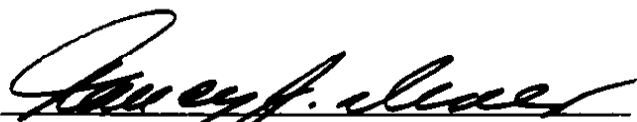
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1987.