

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 26946  
Docket No. MS-26429  
88-3-85-3-111

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

(John Pichalski

PARTIES TO DISPUTE: (Consolidated Rail Corporation

STATEMENT OF CLAIM: "This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an ex parte dispute between me and Consolidated Rail Corporation involving the question: Is the transcript, who's trial was held on march-16-1984 and prepared by M.S. Fornicola on March-26-84 at 405 Division S.T. Elizabeth N.J. and the transcript who's trial was held on april-11-1984 and prepared by M.S. Fornicola on April-18-1984 a valid transcript where by one who is qualified to do so, base an accurate and fair judgement upon?"

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The record indicates that on March 16, 1984, a trial was held for Claimant at Elizabeth, New Jersey in connection with the following charges:

"1. For your falsification of the Elizabeth-port, N.J. Trouble Desk overtime report between 4:00 p.m., February 16, 1984, to 4:00 a.m., February 17, 1984, in that you erroneously recorded one meal period for compensation on this report for yourself while you were assigned as Assistant Foreman on Trouble Desk.

2. For you falsification of the Elizabethport, N.J. Trouble Desk overtime report on February 21, 1984, between hours 4:00 p.m. and 12:p.m. midnight in that your erroneously recorded a meal period for compensation for yourself while you were assigned as Assistant Foreman on the Trouble Desk.

3. For you falsification of the Elizabethport, N.J. Trouble Desk overtime report on February 22, 1984 between hours of 4:00 p.m. to 12:00 midnight in that you erroneously recorded two (2) meal periods for compensation for Mr. L.L. Gilbert, C&S Maintainer, of which only one was authorized while you were assigned as Asst. Foreman on the Trouble Desk."

On April 11, 1984, another trial was held for Claimant. In this instance he was subject to the following charge:

"Insubordination in that you refused to leave company property at 4:40 p.m. on Wednesday, February 29, 1984, after being ordered to do so by your supervisor, M.A. Durdy."

Claimant was again found guilty of the charge, and was assessed the discipline of five (5) days suspension. Appeal was again made and handled in accordance with the Schedule Agreement and the Railway Labor Act up to and including the Senior Director Labor Relations, who denied this appeal also in a letter dated July 25, 1984. Subsequently, the Claimant on his own motion filed the instant claim before the Board.

The biggest problem with the Claimant's case before the Board is that it is difficult to determine exactly what he is seeking. As best can be determined he makes no claims that the Collective Bargaining Agreement was violated. Nor does he request any remedy other than a declaratory ruling. For instance, it is clearly stated he is not contesting the propriety of the suspensions. He only questions the validity of the transcripts.

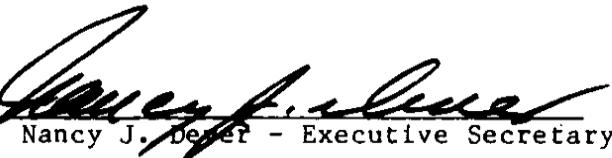
This is significant since our jurisdiction under the Railway Labor Act is to adjust grievances concerning the application and interpretation of collective bargaining agreements. If the Claimant accepts the discipline as he stated in his Rebuttal brief the accuracy of the transcript is a moot question. Thus, because the claim apparently has no basis in the Agreement we have no jurisdiction.

Additionally, we lack jurisdiction since the precise question as put to the Board was not handled on the property and in line with long-standing precedent must be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1988.