

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Southern Pacific Transportation Company
(Eastern Lines)

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

(1) The dismissal of Track Laborer E. Allen, Jr. for alleged '... failure to submit a timely Employees Report of Accident, Form 2611, on alleged injury that occurred on September 18, 1985, and for including false information regarding the cause of injury in that report....' was without just and sufficient cause, arbitrary and on the basis of unproven charges (System File MW-86-23/445-83-A).

(2) The claim presented by Assistant Chairman M. E. Hanks to Regional MofW Manager L. L. Mahon on December 16, 1985 shall be allowed as presented because Regional MofW Manager L. L. Mahon did not disallow the claim as contractually stipulated within Article 15, Section 1(a).

(3) As a consequence of either or both (1) and/or (2) hereof, the claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

This dispute is one of two cases now pending before our Board involving the Claimant. The other dispute is dealt with in Third Division Award No. 27005.

On November 11, 1985, Carrier conducted an investigation on charges that Claimant was absent from service without authority. On November 15, 1985, he was notified that he was dismissed from service. While in the status of a dismissed employee, Claimant was served with new charges alleging that he had violated Rules M and 801. The investigation on these charges was held on November 26, 1985. On December 10, 1985, Claimant was notified that he was dismissed. The Organization appeals to our Board on two bases. First it contends that Carrier breached time limit provisions when it failed to timely deny an appeal of the dismissal and secondly it argues that the evidence does not support a conclusion that Claimant was in violation of Carrier rules.

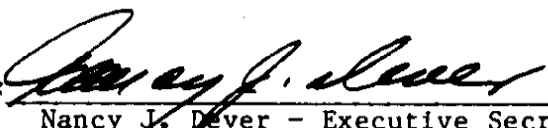
We have carefully reviewed the record and we are not persuaded that the Organization has established that Carrier failed to timely deny the original claim filed on behalf of Claimant. There is evidence that the Organization maintained separate files on different facets of its claim and appeal. There is also evidence that a specific denial letter was timely mailed rejecting the claim. Accordingly, the matter will be considered on its merits.

With respect to the merits of the Claim we must note that at the time of the investigation involved in this Docket, Claimant was in a dismissed status. This dismissal has been upheld in Third Division Award No. 27005. Nonetheless, from the record before us here, we find that adequate evidence exists to establish Claimant's guilt on the charges placed against him. Accordingly, the discipline assessed as a result of this investigation will not be disturbed.

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 April 1988.