

The Third Division consisted of the regular members and in addition Referee Carol J. Zamperini when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union  
(  
(Maine Central Railroad Company (MEC)

STATEMENT OF CLAIM: "Claim of the System Committee of the Organization (GL-10476) that:

(a) The Carrier acted in an arbitrary and capricious manner when it assessed discipline of 90 days suspension of Clerk D. A. Dufour on June 13, 1986.

(b) Claimant's record be cleared of the charge brought against him on May 28, 1986, at the time and one-half rate of Clerk HF Office for December 13, 1988."

(c) Claimant be compensated for wage loss sustained in accordance with the provisions of Rule 36(f).

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.

From March 3, 1986, through May 18, 1986, the Carrier was involved in a strike initiated by The Brotherhood of Maintenance of Way Employees. The Claimant, along with most other employees, honored the picket line. The Carrier continued operations by utilizing management employees, as well as, permanent replacements for striking employees.

On May 28, 1986, the Claimant was notified to appear at a formal Hearing to be held on May 30, 1986. The charge letter read in part:

"The purpose of this hearing is to develop the facts and determine your responsibility, if any, in connection with the charge outlined below:

It is alleged that on May 1, 1986, and on other occasions, you terrorized female clerks of the Maine Central by following them to their areas of residence, spit on their automobiles, and made threatening gestures with a chair. You are charged with possible violation of Guilford General Rules GR-C and GR-D."

The Hearing was postponed and eventually held on June 6, 1986.

The Carrier considered the evidence presented at the Hearing to be sufficient to support the charges against the Claimant. He was suspended for ninety days effective June 13, 1986.

On June 19, 1986, the Organization appealed the Carrier's decision and requested a conference. There is no evidence the Carrier responded to this appeal. On July 9, 1986, the Organization filed a Claim on behalf of the Claimant requesting "eight (8) hours pay each day for May 19, 1986, and continuing each and everyday thereafter until disciplining charges issued June 13, 1986, is rescinded." Again, there is no evidence the Carrier responded to the Claim.

On September 29, 1987, the Organization again advised the Carrier:

"Your attention is directed to the fact that as of this date the Claim has neither been allowed or declined, therefore, the claim must be allowed as presented under the Time Limit on Claim Rule 36."

Even though the Organization misquoted the title of Rule 36 in its September 29, 1987, letter, one cannot escape the clear thrust of the Organization's position. The letter did not say the Carrier violated the Discipline and Grievances Rule 36, but, rather the Time Limit on Claims (emphasis added) Rule 36. The reasoning behind the requirement that parties state with specificity either the rules violated or the provision of the Agreement deemed violated is to allow the other side to ascertain with relative certainty, the contention of the party proposing such and the opportunity to prepare an effective response. The Organization raised the issue appropriately. The Carrier should have had little doubt relative to the proposition being put forth. If the Carrier had seen fit to respond to this Claim, as they were required to do, this matter could and should have been settled more expeditiously. Furthermore, this Board would be in error to allow either Party to ignore the established procedures to the detriment of the other by allowing the Carrier's contention to stand on such a shallow argument.

Neither does the Board believe the Organization waived its right to raise the timeliness issue. While they were not the paragon of persistence, we feel they presented their position to the Carrier with sufficient frequency

during the early handling of this case to preserve a valid claim. It would be contrary to the intent of the Parties when they developed the on-property appeals procedure, to allow either party to ignore an issue raised by the other until the matter became stale or the principals on the other side changed. Admittedly, the Organization is not without fault in the manner in which they pursued this Claim after July 9, 1986, or after September 29, 1987, for that matter, but the reality is the Carrier did not respond in a timely manner to either Claim. The Parties are bound to a strict observance of established time lines. There should be no exception in this case.

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 7th day of May 1992.