

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 590

Case No. 590

File 920393

Parties Brotherhood of Maintenance of Employees
to and
Dispute Union Pacific Railroad Company
 (Former Missouri Pacific Railroad)

Statement

of Claim: 1. Carrier violated the Agreement, especially Rule 12, when A. K. Scott (SSN 432-45-8246) was assessed 45 actual days suspension from service on May 18, 1992.

2. Claim in behalf of Mr. Scott for wage loss suffered during the time out of service and removal of said discipline from his record.

Findings: The Board has jurisdiction of this case by reason of the parties Agreement establishing this Board therefor.

The Claimant Track Foreman A. K. Scott, suffered an on-duty injury. He reported the injury some two weeks later. A formal investigation was held in connection therewith. The Claimant was assessed forty-five (45) days suspension from service, on May 18, 1992, as discipline for his injuries suffered.

The Assistant General Chairman appealed the disciplinary claim to Superintendent R. J. Lang, on June 4, 1992. Chief Engineer J. R. Beran denied the appeal under date of June 15, 1992.

Under our standard of review the first point of consideration is the due process afforded the Claimant under Rule 12 Discipline and Investigation which, in part, reads:

"(d) An employee dissatisfied with a decision will have the right to appeal subject to the provisions of Rule 12. The right of the employee to be assisted by a duly accredited representatives of the employee is recognized."

Rule 12, which flows from the August 21, 1954 National Agreement, Section 2 - Time Claims and Grievances reads:

"Section 2(a) All claims or grievances must be presented in writing by or on behalf of the employees involved, to the officer of the Carrier authorized to receive same within 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 Carrier shall, within sixty days from the date same is filed, notify whoever filed the claim or grievance reason for such disallowance. If not so notified, the claim or grievance shall be allowed as presented but this shall not be considered as a personal waiver of the contention of the Carrier as to other similar claims or grievances."

(b) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within six days from receipt of notice of disallowance and the representative of the Carrier shall be notified in writing within that time of the rejection of a decision. Failing to comply with this provision, a matter shall be considered closed, but this shall not be considered as a personal waiver of the contention of the employees as to other similar claims or grievances..."

Section 2, Second of the Railway Labor Act, As Amended, reads:

"All disputes between the Carrier or Carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confirm, respectively, by the Carrier or Carrier's and by the employees thereof interested in the dispute."

Section 3, First, paragraph (i) reads:

"The disputes between an employee or group of employees and the Carrier or Carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including Chief Operating Officer of the Carrier designated to handle such disputes;..." (emphasis added)

The record reflects that the claim was appealed in the usual manner to the designated officer, Superintendent R. G. Lang, and the claim was denied by the Chief Engineer J. R. Beran who was not the designated officer. Appeal officers are required under the Act to be designated. The Chief Engineer was not designated to handle this claim. Therefore, the claim must be sustained under the procedural objection raised.

As pointed out in sustained Third Division Award No. 23943 (Liberman):

"It must be concluded therefore, that Carrier erred in permitting Mr. Olson to respond to the Step III Appeal rather than the General Manager to whom they had been addressed. Under these circumstances, we cannot reach the merits in the dispute."

Such requirement is not personal to the designated officer and does not mean that he/she must personally deny or answer the claim. The Chief Engineer if not an appellate officer could have denied the claim in the name of the designated officer. However, such procedural failure or error must be recognized.

As pointed out in Third Division (Supplemental) Award No. 16508:

"When the Organization filed its claim it did so as required by the May 13, 1960 letter. In so doing it had a right to assume that the claim would be responded to by the Division Engineer. Then, if there was a denial, it would have had a right to reformulate its claim for appeal to the Chief Engineer who was authorized by the Carrier to handle appeals from the Division Engineer. This right of appeal to which the parties had agreed, has been abrogated by Carrier's action in referring the claim to the Chief Engineer, without a denial by the Division Engineer."

Third Division Award 22710 is also similar in facts to this case. It held in part:

"A dispute similar to this one was adjudicated by this Division some 15 years ago. In that Award, 11374, the authorized officer was a chief Carpenter-the response to the claim was made by Carrier's Division Engineer and the Division then held:

"Petitioner has the right to rely upon Carrier's freely made designation of Carrier's representatives authorized to process claims from inception through appeals on the property. Consequently, any decision relative to the claim, communicated to petitioner by the Division Engineer, is not material.

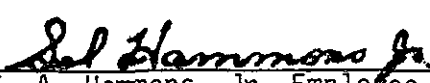
Other awards that have followed the same principle are Nos. 4529, 16508, 17696, 18002, 21297, 19946, 21889 and 9760.


We have reviewed the authority submitted by the parties. The great weight of authority supports the position of the Organization that the Carrier committed a procedural error when an official other than the one designated to receive and process the claims responded to the claims."

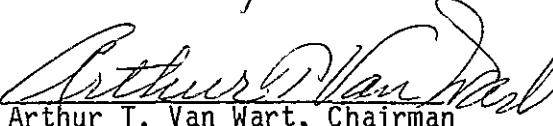
This claim will be sustained.

Award: Claim sustained as presented.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.


S. A. Hammons, Jr. Employee Member


Kathy Alexander, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued November 27, 1993.