

SPECIAL BOARD OF ADJUSTMENT NO. 313

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- "(1) The Carrier violated the effective Agreement by improperly dismissing from its service Sectionman Francisco L. Rodriguez Section 714, Fort Morgan, Colorado, effective July 1, 1954.
- "(2) That Claimant Sectionman Francisco L. Rodriguez be now reinstated to his former position as Sectionman on Section 714 at Fort Morgan, Colorado, with seniority and vacation rights unimpaired and that he be reimbursed for all wages lost due to the Carrier's improper action referred to in Part (1) of this claim."

FINDINGS:

Special Board of Adjustment No. 313, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

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

This Board has jurisdiction over the dispute involved herein.

Claimant was notified of his discharge by letter dated August 28, 1958. Rule 40(a) provides for a hearing in such matters if timely request is made by the employee or the organization.

It reads:

"An employee disciplined or who feels he has been unjustly treated, shall upon making a written request to the Division Engineer within ten days from date of advice, be given a fair and impartial hearing within ten days thereafter by Division Engineer or an officer designated by him, such officer to be superior to the officer or supervisor making the charge, and a decision will be rendered as promptly as possible and within twenty days after completion of hearing. Such employees may select not to exceed three employees to assist at the hearing.

"The right of duly accredited representatives to request the hearing in behalf of the employe and to assist him in the application of this rule is recognized."

To this date, neither the claimant nor the organization has requested a hearing on the matter. They have not followed the provided procedures under the contract for obtaining relief. Although the organization was at all times free to act, admittedly the claimant, being in jail, was under some handicap in pursuing his rights, but the contract makes no exceptions in such situations, neither does it give adjustment boards and referees authority to make exceptions or to perform acts of grace.

This is sufficient to dispose of the claim but another argument of the organization should be answered, namely, that claimant was eventually acquitted of all the same charges in a court of law.

It is well settled that the carrier in discipline and discharge matters may act upon facts as it finds them to be. It is not bound by what any courts of law determine to be an offense or no offense, what civil authorities do or refrain from doing in prosecuting an alleged offense, although findings of a court or jury may have probative value. Acquittals in courts of law may be erroneous depending upon many things, for example, definitions of crimes, lack of prosecution, press of more important matters, inept prosecution, weakness of witnesses, absence of witnesses, perjury or exclusionary rules of evidence. Enforcement of the carrier's rules is not necessarily predicated upon disposition of cases in courts of law.

The cases cited by the carrier are in point.

Collective Labor Agreements, 95 ALR 10; Buberl v. Southern Pacific Co., 94 F. Supp. 11 (N.D. Calif. 1950); Bailey v. Nashville C. and S. L. Ry., 60 Ga. App. 142, 3 SE 2d 112 (1939); Jorgensen v. Penn. R.R. Co., 138 A. 2d 24 (N.J. 1958); Third Division Awards 2166 (no referee); 2470 (Referee St. Clair Smith); 6010 (Referee Messmore); 8843 (Referee F. B. Murphy); First Division Awards 15577 (Referee Mabry); 14274 (no referee); and 13355 (Referee Munro).

The claim must be dismissed for the reason that claimant and the organization have never asked for a hearing or timely pursued their rights under the contract.

AWARD:

The claim is denied.

SPECIAL BOARD OF ADJUSTMENT NO. 313

(s) Marion Beatty
Marion Beatty, Chairman

(s) A. J. Cunningham
A. J. Cunningham, Organization Member

(s) A. D. Hanson
A. D. Hanson, Carrier Member

Omaha, Nebraska
November 21, 1960