

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29493
Docket No. MS-29635
93-3-90-3-631

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

(K. L. Holland

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PARTIES TO DISPUTE: (Southern Pacific Transportation
Company (Western Lines)

STATEMENT OF CLAIM:

"During the appeal process to Labor Board of Southern Pacific Transportation Company, the decision to deny my appeal, by Ms. P. Joyner, Labor Relations Manager, violated the current Signalmen's Agreement, as amended, particularly Rule 54, when on or about June 4, 1990, the denial of original claim dated March 29, 1990, was received after the sixth (60) day limit allowed. Therefore, according to Signalmen's Agreement, as amended, Carrier should now be required to return me to my former position as Signal Maintainer, at Suisun, California, with all right and benefits unimpaired, and compensated for any lost time, including overtime."

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.

On January 18, 1990, the Claimant was advised by the Carrier that he was to be present at an Investigation to determine facts and place responsibility, if any, in connection with his alleged failure to perform the necessary maintenance and repairs to warning lights and gongs at a number of road crossings. On January 22, 1990, the Claimant signed a formal waiver of this Investigation. That waiver, which is part of the record before the Board, with the Claimant's signature duly affixed, is acknowledged as received by the Carrier's Signal Supervisor as of January 24, 1990, at 9:00 A.M. The waiver, cited here in toto for the record, states the following:

"Mr. M. L. Irvine, Superintendent:

I hereby waive formal investigation and accept, without protest, an assessment of discipline to consist of relinquishing my position as Signal Maintainer of the Suisun District for a period of not less than two (2) years. During the two (2) year period I will work at the System Signal Shop in Sacramento, California under the direct supervision of the Shop Foreman.

In doing this, I accept responsibility for failing to perform the necessary maintenance and repairs to the warning lights and gongs at the following crossings:

Cordelia Road A48.3, Sunset Ave. A50.4
Taber Road A51.4, Canon Road A55.4

This was in violation of Rule 607, that part reading:

CONDUCT, EMPLOYEES MUST NOT BE:

- (1) Careless to the SAFETY OF.....OTHERS:
- (2) NEGLIGENT.....

Any act of...willful disregard or negligence affecting the interest of the Company is sufficient cause for dismissal....

In difference to duty, or the performance of duty, will not be condoned.'

of the rules for Maintenance of Way and Structures, Southern Pacific Transportation Company.

K. L. Holland
Signal Maintainer
SSA# 370-52-3584"

Apparently the Claimant had second thoughts about the waiver he signed and contacted the General Chairman of the Organization. Accordingly, on March 9, 1990, the latter filed a Claim on grounds that the Claimant "...contends that he was not given an opportunity to consult with his duly accredited representative before signing the waiver."

In denying the Claim, the Carrier states that the Claimant was afforded the opportunity to consult with his local representative about signing the waiver, that he did in fact do so, and only after that was the waiver signed. The crux of the issue, according to the Carrier, is that the Claimant simply changed his mind after signing the waiver and now he improperly seeks relief under the false pretense that he was somehow coerced to do what he freely did, with proper Organization representation in the first place.


A complete review of the record shows that the facts as they are put forth by the Carrier are substantially correct. The Claimant did go to the Local Chairman of the Organization about the charge brought against him and the Local Chairman even consulted with the Local Grievance Committee of the Organization. The options were explained to the Claimant and he chose to sign the waiver. There is no evidence to support the contention by the Claimant that he was told that he would be removed from service if he did not sign the waiver. Both the Carrier and the Organization acted properly in this matter and the Claim must be denied. The Claimant freely signed a waiver after informing himself of his rights under the Agreement and such waiver is binding. There was no violation of Rules 53 or 54 of the Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 21st day of January 1993.