Award No. 1120

Docket No. 1117

NATIONAL RAILROAD ADJUSTMENT BOARD

FOURTH DIVISION

PARTIES TO DISPUTE:

GUSTAV A. FALLER

NEW YORK CENTRAL RAILROAD COMPANY, (Eastern District)

STATEMENT OF CLAIM: A. It is the claim of Gustav A. Faller that Master Mechanic Mr. J. E. DeFreest of the New York Central R.R. violated Rule 18 Section "B" of the Agreement between the New York Central R.R. and the American Railway Supervisors Assn. Inc. represented by New York Central System Lodge No. 331 in preferring charges and disciplining Gustav A. Faller then Foreman of the Freight Repair Track at Weehawken, N. J.

B. Gustav A. Faller be restored to his former position of Foreman with seniority unimpaired and be compensated for wage loss between present and former position.

EMPLOYE'S STATEMENT OF FACTS: In February and March, 1954, Mr. A. Williamson and Mr. C. Willie of the AAR Billing Bureau inspected the billing file at Weehawken Repair Track and took exceptions to bills in the file. While they were at Weehawken, Mr. J. E. DeFreest came to the Repair Track Office and inspected and discussed the exceptions being taken by Mr. Williamson and Mr. Willie with them and then assigned his assistant to remain at Weehawken with Mr. Williamson and Mr. Willie until the check was complete which was for about two weeks in March, 1954.

On August 13, 1954, Mr. J. E. DeFreest notified me by his letter File 13.5—13.2 AAR, that I was to be given a hearing to answer charges. These charges he was fully aware of when he inspected and discussed the exceptions with Mr. Williamson and Mr. Willie in March, 1954.

POSITION OF EMPLOYE: Rule 18 Section B of the American Railway Supervisors Assn. Inc. and the New York Central R.R. states:

> "A supervisor who has been in carrier's service as such 60 calendar days or longer and against whom carrier has preferred charges shall not be disciplined or dismissed without a hearing at which he shall be permitted to have representatives present and witnesses to testify on his behalf. The hearing shall be held within 15 calendar days from the date the occurrence or offense becomes fully known to the proper official. Decision shall be given 15 days after close of the hearing."

Mr. J. E. DeFreest did inspect and discuss with Mr. Williamson and Mr. Willie of the New York Central R.R. AAR Billing Bureau their exceptions taken to billing at Weehawken in February and March of 1954 therefore as Mr. DeFreest did assign his Assistant to remain at Weehawken until the check of records were complete. He was fully aware of the fact at the time

his Assistant returned to him and then had 15 days under the agreement to prefer charges.

In the carrier's Statement of facts Exhibit A the New York R.R. claims that the records were removed from Weehawken to Buffalo and returned to Weehawken. Mr. Tulip the General Car Foreman admitted that the records were returned in the early part of June of 1954 and Mr. J. E. DeFreest was aware that the records were returned to Weehawken and on his visit to Weehawken I spoke to him regarding what would be the outcome of the exceptions taken by the Billing Bureau and he stated he didn't know. If the charges could not have been brought against me without the bills he should have done so in June 1954 or within 15 days after the bills were returned to Weehawken and not in August of 1954.

Petitioner does not desire an oral hearing.

CARRIER'S STATEMENT OF FACTS: In the early part of 1954, while two of the Carrier's Traveling AAR Inspectors were making a check of car records at Weehawken, (N.J.) Freight Car Repair Track, they took exception to certain records on file. Their preliminary findings evidenced there had been a failure to make necessary reports on AAR billing and this made it mandatory for them to make a very extensive check. This necessitated the removal of certain pertinent records from Weehawken to the Carrier's AAR Billing Bureau at Buffalo, N. Y., for more careful review. This process involved checking with this Carrier's Transportation Department as well as other Carriers to obtain information in an attempt to clarify the discrepancies in these records. The study of these records took some time before the extent of any possible dereliction of duty could be determined. It developed that the claimant, Mr. Faller, had been improperly maintaining his records. Immediately after this was specifically known, formal charges were filed against the Claimant by letter, dated August 13, 1954 (copy attached hereto as Carrier's Exhibit "A"). As specified therein, hearing was set for August 18, 1954. At the request of the Claimant's representative under the applicable agreement, this hearing was postponed until August 24, 1954.

The Claimant was represented at the hearing on August 24, 1954 by proper representatives under the applicable agreement, i.e., the Local Chairman and District General Chairman of the American Railway Supervisors Association. Evidence presented at the hearing resulted in the removal of the Claimant from his position as a supervisor. Claimant then was allowed to exercise his seniority rights under another and entirely separate agreement and he continued employment with the Carrier as a journeyman carman.

No appeal from the decision was taken by representatives of the American Railway Supervisors Association. However, the Claimant, as an individual, appealed the case up to and including the Carrier's highest appeals officer, who denied the claim as presented in the instant case on June 8, 1955. (Copy of Carrier's highest appeals officer's declination attached hereto as Carrier's Exhibit "B"). The Claimant notified the Carrier that this decision was not acceptable in a letter dated August 4, 1955. (Copy of that letter attached hereto as Carrier's Exhibit "C").

Nothing further was heard from the Claimant until receipt of Executive Secretary Parkhurst's letter of February 28, 1956, notifying the Carrier that Mr. Faller intended to file an ex parte submission with your Board.

POSITION OF CARRIER: Before going into the merits of this claim, Carrier wishes to point out that this case is not properly before this Board, inasmuch as the Claimant has exceeded the time limit provisions of Section (b) of Rule 17 of the applicable agreement thus rendering the claim a nullity. This section reads as follows:

> "The decision of the highest official of the Carrier designated to handle such appeals shall be considered final and binding unless within 30 calendar days thereafter he is notified in writing that the decision is not acceptable. Subsequent handling must be instituted within six months from date of said official's decision."

Carrier's decision on this individual's claim was rendered by letter under date of June 8, 1955 (See Carrier's Exhibit "B"). It was not until August 4, 1955 (57 days after decision of Carrier's highest appeals officer) that the Claimant notified the Carrier of his non-acceptance of the Carrier's decision, thereby exceeding the 30-day time limit provision specified in Section (b) of Rule 17 by 27 days and thus rendering the Carrier's decision "final and binding". The second instance in which the Claimant exceeded the time limits was when he progressed his case to your Board on February 21, 1956, or 8 months, 13 days after decision of Carrier's highest appeals officer, whereas the time limit provisions in Section (b) of Rule 17 specify that "subsequent handling must be instituted within six months from date of such official's decision".

Section (c) of Rule 17 of the Supervisors' agreement reads as follows:

> "Any claim or grievance not appealed in accordance with the provisions of this rule shall be deemed to have been abandoned."

In view of the Claimant having exceeded the time limit provisions of Section (b), Rule 17 of the applicable agreement not just once, but in two separate instances, and in view of the language in Section (c) of Rule 17, the claim is obviously invalid and should be dismissed.

Without waiving its position that the instant claim should be dismissed, the Carrier will now present its position relative to merits of this dispute.

In a periodic check made in the early part of 1954 at Carrier's Weehawken, New Jersey, Car Yard, the Carrier's AAR Inspectors found serious errors and discrepancies in the records and procedures under the jurisdiction of the Claimant who was Freight Repair Track Foreman at that point. The nature of these errors and discrepancies made it necessary for certain records to be shipped to the Carrier's AAR Billing Bureau located at Buffalo, N. Y., for detailed checking against their own reports, and those of other Carriers. This check took many months to complete. It was necessary to make a careful and detailed investigation to determine the seriousness of the apparent failure of the Claimant to fulfill his recognized duties. Until such a complete check could be made, Carrier was not in a position to proceed with an investigation against the Claimant as the responsible party. Just as soon as the Carrier had full knowledge it filed charges against the Claimant (See Carrier's Exhibit "A"). It is to be stressed that Carrier's representative took action in this case just as soon as it had discovered the extent of possible derelictions.

The Claimant alleges that the Carrier violated Section (b) of Rule 18, reading as follows:

> "A supervisor who has been in carrier's service as such 60 calendar days or longer and against whom carrier has preferred charges shall not be disciplined or dismissed without a hearing at which he shall be permitted to have representatives present and witnesses to testify on his behalf. The hearing shall be held within 15 calendar days from the date the occurrence or offense **becomes fully known** to the proper official. Decision shall be given within 15 days after close of the hearing." (Emphasis ours).

Certainly there was no violation of the provision covered by the first sentence for a hearing **was** held at which the Claimant was represented by the Local Chairman and District General Chairman of the American Railway Supervisors Association. As to the second sentence, this specifically provides that "The hearing shall be held within 15 calendar days from the date the occurrence or offense becomes **fully known** to the proper official". Certainly the offense did not become fully known to Carrier's representative until after the aforesaid investigation by its AAR Billing Bureau had been completed. Immediately upon completion of this investigation, Carrier filed charges against the Claimant and held a proper hearing within the 15-day limit provision of the foregoing quoted section of Rule 18. A transcript of the hearing is attached as Carrier's Exhibit "D".

First Division Awards 3140, 14014, 16487, and Third Division Award 4874 clearly support the Carrier's action in not preferring charges until it was in possession of the facts on which a charge could be predicated. These Awards also stipulate that the period of such a time limit does not begin to run until the facts become fully known. When these facts became known in the instant dispute, Carrier immediately preferred charges against the Claimant.

As to third sentence of Section (b), Rule 18, decision by Carrier was rendered on August 27, 1954, three days after hearing was held, well within the 15-day time limit for such decisions.

Charges filed against the Claimant were that parts were applied to foreign cars without properly marking billing repair cards in the billing area so that billing could be made against the respective railroad owning the cars, also improper filling out of damage reports involving cars derailed which caused improper billing against foreign railroads. Failure of the Claimant to correctly complete these records prevented the Carrier from making proper collections from other railroads for repairs made to their cars. This failure amounted to losses conservatively estimated at more than $5,000 during the 12-month period preceding the investigation, this being the only period during which an accurate check was feasible. It can be assumed, naturally, that the Claimant's neglect was not necessarily confined to this one-year period, but also extended into the prior period of his responsibility.

The Carrier has shown that inasmuch as the Claimant in two instances exceeded the time limit provisions of Section (b) of Rule 17, and further considering the language of Section (c) of Rule 17, this claim is improperly before the Board and should be dismissed. The Carrier has also shown that it complied fully with the provisions of Section (b) of Rule 18, contrary to contentions of the Claimant.

For the foregoing reasons the contentions of the Claimant are without merit and the claim should be dismissed.

All data submitted in support of Carrier's position has been presented to the other party and made a part of the particular question in dispute.

Oral hearing is requested.

(Exhibits are not reproduced.)

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

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

The parties to said dispute waived right of appearance at hearing thereon.

The record discloses that the dispute was not properly progressed within time limits prescribed by the governing Agreement.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FOURTH DIVISION

ATTEST: R. B. Parkhurst
Secretary

Dated at Chicago, Illinois, this 29th day of June, 1956.