

Award No. 1995

Docket No. 1963

NATIONAL RAILROAD ADJUSTMENT BOARD

FOURTH DIVISION

The Fourth Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

PARTIES TO DISPUTE:

RAILROAD YARDMASTERS OF AMERICA

THE DELAWARE AND HUDSON RAILROAD CORPORATION

STATEMENT OF CLAIM: Claim and request of the Railroad Yardmasters of America that —

Yardmasters J. Weir, F. Clough, and J. Liss be absolved from any complicity in the mishandling of D&H 16200 on June 22nd and on/or June 23, 1963 and their records cleared accordingly.

That Yardmaster J. Weir be paid for all monies lost in wages by his seven day suspension which started August 5, 1963.

That Yardmasters J. Weir, F. Clough and J. Liss be compensated for time spent in attending investigation at Colonie; July 2nd and hearing held at Colonie, July 22nd.

Yardmasters F. Clough and J. Liss be compensated one (1) day each for summarily being ordered to Chief Trainmaster's office on August 5th without written advice on what was to be discussed or chance to secure a representative of his choice.

OPINION OF BOARD: Article 13-A of the applicable Agreement provides as follows:

"A. A Yardmaster will not be disciplined or dismissed without an investigation before the proper official. He will be notified of the investigation in writing. The notice shall clearly specify the nature of the case. The investigation will be conducted within ten (10) days of the date on which the incident occurred.

If the Yardmaster concerned is charged with responsibility, he will, when possible, be given a hearing within ten (10) days of the date of the investigation. During this hearing a representative of his choice may be present. He will be furnished with written notice of hearing which shall state the case to be discussed. Decision will be rendered within ten (10) days of the date of hearing.

Stenographic transcript of investigation and hearing when one is made will be furnished upon request."

The record shows that on Friday, June 21, 1963, the Yardmaster's work sheet at Colonie, New York, contained, among other things, the following instructions:

"D & H 16200 'L' load, take out Saturday 6/22. Place on cripple track 12 noon."

Notwithstanding this instruction, the car was not moved until Monday, June 24, 1963, after which it was returned to the shipper at its request where the contents were unloaded and thereafter shipped by truck.

An investigation was held on July 2, 1963, within the time limits provided in Article 13. A hearing was held on July 22, 1963, twenty days after the investigation. In a written memorandum dated August 1, 1963, Claimant Weir was suspended from service for a period of seven days commencing August 5, 1963, and Claimants Clough and Liss were each assessed a reprimand effective the same date. Copies of the memorandum were received by the Claimants more than ten days after the hearing. There is no evidence that copies of the decision of suspension and reprimand were mailed to the Claimants on August 1, 1963. On the contrary, Claimant Weir received his copy from Chief Trainmaster Hontz on August 3, 1963, twelve days after the hearing; Claimant Liss received his copy from the Colonie Crew Dispatcher on August 3, 1963, twelve days after the hearing; and Claimant Clough received his copy from the Colonie Crew Dispatcher on August 4, 1963, thirteen days after the hearing.

This procedural defect, although raised by the Organization on the property and before the Board, has never been fully challenged or denied by the Carrier.

Carrier says only that the decision was rendered within the ten-day period as prescribed by Article 13 because such decision is dated August 1, 1963. The fact that Claimants did not receive copies of the decision directly from Carrier's representatives until later dates is of no importance. It is Carrier's position that the date of decision controls. That date alone, says the Carrier, determines when the decision was "rendered".

We do not agree with Carrier's position. If what it says could possibly be the definition of "rendered" the Carrier could have held the August 1, 1963 decision for weeks and delivered copies to Claimants even thirty days thereafter. Such a definition is not only unreasonable, but is contrary to the ordinary meaning and intent of the procedural requirements provided in Article 13.

"Rendered" as used in this Agreement means not alone the date when the decision was made, but when it was dispatched; when it was sent to Claimants through normal available communication channels. If copies of the decision had been mailed to Claimants on August 1, 1963, and the envelopes were each postmarked with that date, the decision would have been "rendered" within the ten-day period. But since they were not so mailed, but copies were delivered in person to Claimants twelve and thirteen days after the hearing, the decision was not "rendered" within such ten-day period.

The Agreement obligates the Carrier to render a decision within ten days of the date of the hearing. Since Carrier failed to "render" a timely decision, that decision is void and is without effect.

Claimant Weir's suspension and Claimants Clough's and Liss' reprimands are invalid and their employment record should be cleared. Likewise, Claimant

Weir shall be compensated for lost wages during his seven-day suspension which started August 5, 1963, and all Claimants shall be compensated for time spent attending the investigation on July 2, and the hearing on July 22, 1963. There is no evidence that Claimants Clough and Liss lost any earnings when they appeared at the Chief Trainmaster's office on August 5, 1963. They are not entitled to additional compensation for such time.

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

The carrier and the employes involved in this dispute are respectively carrier and employe 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.

The parties to said dispute were given due notice of hearing thereon.

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

The Carrier violated the Agreement in accordance with the Opinion.

AWARD

1. That Claimants' records be cleared of any suspension or reprimands resulting from alleged mishandling of car D&H 16200 on June 22 and June 23, 1963.
2. That Claimant J. Weir be paid all moneys lost in wages during his seven day suspension which started August 5, 1963.
3. That all three Claimants be compensated for time spent attending the investigation on July 2, 1963, and the hearing on July 22, 1963.
4. That the Claims of F. Clough and J. Liss for an additional day of pay for August 5, 1963, are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FOURTH DIVISION

ATTEST: Patrick V. Pope
Secretary

Dated at Chicago, Illinois, this 8th day of April, 1965.