Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

Award No. 3284
Docket No. 3187

Referee Dana E. Eischen

PARTIES TO DISPUTE: Railroad Yardmasters of America

Robert W. Blanchette, Richard C. Bond, and John H. McArthur, Trustees of the Property of Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim and request of Railroad Yardmasters of America:

SYSTEM DOCKET 471
WESTERN REGION - CLEVELAND DIVISION CASE 40-73

Request that Yardmaster Mitrovich be restored to service as a Yardmaster with all rights unimpaired and paid for all time lost. The Time limits specified in Rule 4-G-1 shall be observed in accord with Rule 6-A-1.

OPINION OF BOARD: Claimant was posting on the Yardmaster position at Carrier's Collinwood Yard on May 23, 1973 when he was observed by the Trainmaster reading a magazine. Claimant previously had posted unsuccessfully for Yardmaster positions and had, in effect, been given a "second chance" at the request of Petitioner's General Chairman. By letter dated May 24, 1973 the Trainmaster notified Claimant that he was disqualified as a Yardmaster. The instant claim for restoration and compensation for time lost was by certified letter filed with the Trainmaster on May 30, 1973 alleging a violation of Rule 6-A-1 of the controlling Agreement. The claim was filed by Vice General Chairman Georgi E. Fielding as the duly accredited representative. Thereafter a hearing into the matter was held on July 19, 1973 at which Claimant appeared and was represented by Vice Chairman Fielding. Claimant remained disqualified after the hearing and Carrier asserts it so notified him in a letter dated June 22, 1973 and sent to Claimant by first-class mail. Claimant denies ever having received the letter. The record is uncontroverted that no letter or other written decision in the matter was sent to the duly accredited representative. By letter dated August 29, 1973, Vice General Chairman Fielding requested payment of the claim on the grounds that the 60 day time limit allowed under Rules 6-A-1 and 4-G-1 had been surpassed. Carrier denied this request on September 6, 1973 stating that the procedural time limits had not been violated and that *arguendo* Claimant earned more as a Trainman than he had lost as a Yardmaster. Subsequent appeals were denied until, by letter dated May 24, 1974 Carrier's Director-Labor Relations stated *inter alia* as follows:

"It is your position that Rules 4-G-1 and 6-A-1 were violated by the Carrier in this case.

"We cannot agree with your contention that the Carrier has failed to comply with Rule 6-A-1. The disqualification was appealed to the Trainmaster and a hearing was held on June 19, 1973. Under date of June 22, 1973, Mr. Mitrovich was advised that he remained disqualified. Subsequent appeal to the Superintendent-Labor Relations was also denied within the time limits.

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"Therefore, your appeal under Rule 6-A-1 on behalf of Mr. Mitrovich that he be restored to service as a yardmaster is denied.

"We will, however, agree with your position that the Carrier violated Rule 4-G-1 and we will arrange to allow the Appellant the difference between his earnings as a trainman and what he could have earned as a yardmaster from May 24, 1973 to September 6, 1973, which was the date of the Superintendent-Labor Relation's letter which denied the claim filed by the Local Chairman on behalf of Mr. Mitrovich.

"Claims for dates beyond September 6, 1973 because Mr. Mitrovich was disqualified as a yardmaster are denied."

* * * * * * * * *

The pertinent provisions of the Agreement at issue herein read as follows:

Rule 6-A-1

"When it is considered that an injustice has been done with respect to any matter arising under this agreement, the yardmaster affected or the duly accredited representative, as that term is defined in this agreement, on his behalf, may within ten days present the case in writing to the yardmaster's immediate superior. If the decision of such superior, which shall be in writing, is unsatisfactory, such decision may be appealed by the yardmaster affected or by the duly accredited representative on his behalf to the Superintendent Personnel.

"In the case of claims for money alleged to be due, the time period specified in Rule 4-G-1 shall be observed." (Emphasis added)

* * * * * * * * * *

Rule 4-G-1

"When claims for compensation alleged to be due have been presented in accordance with the foregoing paragraph (a) of this Rule 4-G-1, including exceptions (1) and (2), and are not allowed, the employe or the duly accredited representative (when the claim is presented by such representative) will be notified to this effect, in writing, within sixty calendar days from the date his claim was presented. When not so notified, claims will be allowed." (Emphasis added).

* * * * * * * * * *

The claim alleging "injustice" was also a claim for money alleged to be due and thus the time period specified in Rule 4-G-1 shall be observed. The claim was presented by the duly accredited representative and was not allowed. No written notification of disallowal was sent to the duly accredited representative within sixty calendar days from the date the claim was presented.

The foregoing record establishes beyond cavil that Rules 6-A-1 and 4-G-1 (to the extent that the latter is incorporated by reference into the former) have been violated by the Carrier. In the facts and circumstances, and in the face of the express language of 4-G-1 we need not and do not reach the merits

of Claimant's disqualification.

Presented, the Agreement provides with unabated clarity that "When not so notified claims will be allowed" (Emphasis added). In the face of such clear and unambiguous contract language we must give effect to the provision exactly as it is written by the parties. To do otherwise would be to usurp in the name of interpretation the role of the draftsmen of the Agreement, and this we shall not do. Accordingly, and consistent with the mandate of the Agreement, we shall sustain the claim for reinstatement and compensation. We note in so holding that Rule 4-G-1 (h) specifies that the monetary adjustment "shall not exceed in amount the difference between the amount actually earned by (Claimant) and the amount he would have earned from the Company if he had been properly dealt with under the Agreement.

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 waived right of appearance at hearing, but were granted privilege of appearing before the Division with Referee sitting as a member thereof, to present oral argument.

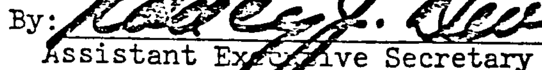
A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST:

Executive Secretary
National Railroad Adjustment Board

By: 
Assistant Executive Secretary

Dated at Chicago, Illinois, this 8th day of January 1976.