Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

Award Number 3559
Docket Number 3554

Referee Herbert L. Marx, Jr.

PARTIES TO DISPUTE: Railroad Yardmasters of America

Former Penn Central Transportation Company

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

SYSTEM DOCKET 609
WESTERN REGION - CLEVELAND DIVISION CASE 1/75

Claim of Yardmaster Sam Orlando for 5 days pay December 15, 16, 17, 18, 19, 1975, for time lost account disqualification.

OPINION OF BOARD: Claimant was disqualified by the Carrier, but immediately following a formal hearing, he was reinstated to his former Yardmaster position. A timely appeal was made by the Organization to the disqualification in its entirety (which, it developed, was limited to five working days), and was addressed to the Claimant's immediate supervisors, Trainmaster T. E. Streicher. Denial of the claim (as it referred to the five days) was made, after hearing by Terminal Superintendent R. L. Stroup. It was significantly, Terminal Superintendent Stroup who had issued the original full disqualification, later mitigated.

It is the Organization's position that the failure of the Claimant's immediate supervisor to deny the claim (or, indeed, to take any part in the appeal procedure) must lead inevitably to the granting of the claim under the specific provisions of the applicable rules.

The applicable portion of Rule No. 6 -- APPEALS, reads as follows:

> "6-A-1. Method of. (Effective November 1, 1955.) 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 (10) 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 then 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."

Applicable portions of Rule 4-G-1 are as follows:

"4-G-1. Compensation claims. (a) Claims for compensation alleged to be due, may be made by a Yardmaster or by a duly accredited representative on his behalf and must be presented, in writing, to the Yardmaster's immediate supervisor within sixty (60) calendar days from date of occurrence, . . .

(c) 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 (60) calendar days from the date his claim was presented. When not so notified, claims will be allowed."

The Board holds that the claim was properly initiated under Rule 6-A-1, which applies to "an injustice . . . with respect to any matter." The reference in Rule 6-A-1 to Rule 4-G-1 is limited to an injunction that the time period specified in the latter rule shall be observed. This reference does not transfer the claim in whole to Rule 4-G-1.

Basic to all consideration of matters by this Board is the paramount necessity to be guided and bound by the clear and unequivocal language of the Agreement between the parties. The consideration that some alternate method of procedure may seem fitting and sufficient to one of the parties does not permit the Board to share such view. In this instance, the Organization followed the appeal procedure in precise fashion. The Carrier, on the other hand, chose to eliminate the "immediate superior" from the appeals procedure altogether. The record is barren of any indication that the Carrier sought or obtained the Organization's concurrence in this procedural deviation. Not

only has the Organization found the Carrier in technical error, but in addition the Organization properly points out that the appeal was denied to the first instance by the same Carrier official who imposed the initial disqualification and later moderation thereof.

Notification was due to the Claimant and the Organization from his immediate superior. If the immediate superior, upon consideration, had denied the claim, and the Organization had pursued its appeal, higher officers of the Carrier would become properly involved. But this does not permit the Carrier, under the language of the Agreement, to ignore the required role of the immediate supervisor in the chain of appeal. The Organization was entitled to a reply from the immediate supervisor. In its absence, the Agreement is clear (Rule 4-G-1 (c)): "When not so notified, claims will be allowed."

Whether the Carrier's actions were deliberate or accidental need not be determined. What is certain is that the Carrier violated the rules of procedure and that the same rules specify the remedy.

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.

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.

A W A R D

Claim sustained.

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 5th day of April 1978