

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISIONAward Number 3684
Docket Number 3661

Referee Joseph A. Sickles

PARTIES Railroad Yardmasters of America

TO

DISPUTE: Union Pacific Railroad Company (Eastern District)

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

Mr. Stratton be reinstated as Yardmaster with seniority and all other rights unimpaired, and that he be paid for all time lost beginning February 18, 1978 and until so reinstated, including rest days and vacation allowances and sick pay allowances.

Mr. Stratton received a letter informing him of his dismissal on February 14, 1978. The letter of dismissal was posted on February 13, 1978. The investigation was held on February 2, 1978. Mr. Stratton's dismissal was not in accordance with agreement.

OPINION OF BOARD: On January 31, 1978, Claimant was notified of an investigation (concerning a derailment) which was conducted and completed on February 2, 1978. A letter of dismissal (dated February 10, 1978) was postmarked on February 13 and received one day later.

The Organization advised Carrier, on February 15, 1978 that it had violated Rule 8(e):

"In cases where discipline is applied, the yardmaster will be advised thereof in writing within ten (10) days from the date the hearing is completed" (underscoring supplied).

On February 22, 1978 Carrier replied, stating that Claimant was notified "...verbally via the telephone on February 10, 1978 and letter was mailed... on that day..." It was not until November 13, 1978 that Carrier conceded that the letter was "dictated and typed" on February 10, 1978 and "handled for mailing in the normal course of business." It was then stated that the letter was placed in the outgoing mail and forwarded for final processing in the mail room and:

"Inasmuch as February 10 was a Friday and the letter arrived in the mail room late that afternoon, it was not postmarked until Monday, February 13, 1978. Thus, the requirements of Rule 8(e) were satisfied."

Claimant argues that the written notification must be in the hands of the employee not later than the 10th day and cites authority to that effect. But we find it unnecessary to comment on that theory. The fact remains that Rule 8(e) was violated in any event. It is rather unimportant when the letter was dictated and typed. The Rule mandates that the Employee be advised - in writing - within ten (10) days and at the very least that requires that the notification be placed into the U. S. Mail within that time frame.

There is also a dispute as to whether or not this matter was settled on the property on a leniency basis. We do not find evidence of a mutual agreement in that regard. The documents exchanged on the property show that Carrier stated - on May 24, 1978 - that the Employee was reinstated (on May 6, 1973) on a "leniency basis". The Organization denies that the matter was ever prosecuted on that basis and we are unable to discover anything to contradict that denial. Cases cited by Carrier in this regard refer to the necessity for "evidence of probative value" That a claim was handled as a request for leniency (Third Division Award 11914) and refers to claims "prosecuted ... on the basis of leniency." (Award 143 of Special Board 589). To the contrary, the Claimant asserted a failure to comply with a procedural mandate from the outset.

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.

Form 1

-3-

Award Number 3684
Docket Number 3661

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.

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 10th day of October 1979