

NATIONAL RAILROAD ADJUSTMENT BOARD  
FOURTH DIVISIONAward Number 3830  
Docket Number 3786

Referee Joseph A. Sickles

PARTIES Railroad Yardmasters of America  
TO  
DISPUTE: Southern Railway Company

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

Claim on behalf of L. L. Floyd, Jr., Yardmaster at Lynchburg, Virginia, claiming 1 day at yardmasters pro rata rate for attending hearing on June 6, 1979. And, travel expense in amount of \$35.00 for travel from Montview, Va. to Greensboro, N.C. and return.

Also claiming 19 days at yardmaster pro rata rate and one day at double time and one-half for July 4th account being suspended from June 16, 1979 to and including July 15, 1979.

OPINION OF BOARD: The Claimant was notified to attend an investigation concerning a derailment. Subsequent to the investigation, the Claimant was suspended for thirty (30) days.

The Organization has asserted, among other things, that this claim must be sustained because Superintendent, Sims, was the charging officer; was, in essence, a witness; was the individual who decided and rendered the discipline (interpreting his own bulletin); and then became the First Appeals Officer. In this regard, the Employees rely upon, among others, Second Division Award 7119 concerning this Rail Carrier, Fourth Division Award 3746, and Fourth Division Award 3747 concerning these same parties.

In its Submission, the Carrier made reference to certain historical practices which permit the activity complained of by the Organization.

The Carrier repeated those assertions in its Rebuttal Submission and cited Second Division Award No. 8367, which suggested that a "...tangible and specific relationship between the multiplicity of roles..., in fact, or probably did in fact, occur."

In the presentation to the Board, the Carrier has repeated those assertions and, in addition, has cited Second Division Award 8412.

Basically, as it relates to this procedural question under review, the Carrier reminds us that Second Division Award 7119 - relied upon by the Organization - held that "Each such case must turn on its own merits." and that minor overlapping of roles, while not to be encouraged, "...is not prima facie evidence without more of prejudicial procedural imperfections;..."

In our effort to resolve this dispute and to be responsive to the contentions and assertions of both sides, we have again reviewed all of the cited authority. While it may very well be that the author of Second Division Award 7119 found no prima facie evidence of a violation concerning some minor overlapping of roles, he held that the greater the merging of roles, the more compelling the influence of pre-judgment or pre-judice. In the case there under review, he found that the same individual - although he did not actually testify against the Claimant at the hearing - activated the investigation, preferred the charges, held the hearing, reviewed the record, assessed the discipline, and denied the appeal. Such overlapping was not considered to be a mere technicality, but was held to be a substantial denial of the Claimant's rights.

While Fourth Division Award 3746 is of interest as a precedential matter, Fourth Division Award 3747 takes on added significance when we recognize that said Award resolved a dispute between these same parties. There, the Superintendent was the Charging officer, the Hearing Officer, the Decision Officer and an Appeals Officer. The Award held:

"It views such multiplicity of roles as material and prejudicial to the right of fair trial and appeal which the contract requires. We agree. While numerous awards have held that some overlapping of functions in the hearing and decision process is not violative of due process and justice, the inclusion of the appeal hearing in such multiple duties attacks the integrity of the appeal process and denies the Claimant the independent, non-prejudicial consideration required by the appeal process."

Thereafter, the author of Fourth Division Award 3747 cited, with favor, the pertinent portions of Second Division Award 7119.

Second Division Awards 8367 and 8412, relied upon by the Carrier, stressed the need to show that the multiplicity of roles resulted in a procedural impediment to the Claimant's rights; rather than focusing on a question of concepts of "fair and impartial discipline..." which "...cannot be accomplished with such egregious overlapping of functions.", as denounced in Second Division Award 7119.

But, be that as it may, we find it totally unnecessary for us to resolve the apparent conflicts between the Awards.

It has long been held that resolutions of disputes between the same parties concerning the same basic issues should not be disturbed by a subsequent Referee, or Arbitrator, in this or in other industries, unless the second Referee or Arbitrator determines that the initial Award was palpably erroneous. That rule continues to apply even if the second Referee or Arbitrator might have decided the case differently had he heard the dispute in the first instance. The basis for those Awards which uphold that doctrine of res judicata is apparent when one recognizes that a predictability of Awards between the same parties tends to facilitate an orderly processing and resolution of labor disputes.

Second Division Awards 8367 and 8412 did not resolve disputes between these parties, whereas Second Division Award 7119 concerned this Carrier and Fourth Division Award 3747 resolved a dispute between these parties.

Accordingly, under the long established precepts of this Board, we have no alternative but to sustain the claim.

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