Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

Award Number 3953
Referee Martin F. Scheinman Docket Number 3910

PARTIES TO DISPUTE: Railroad Yardmasters of America

Southern Railway Company

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

Yardmaster G. B. Vaughn's record be cleared and that he be paid for all time lost (15 days actual suspension) and all rights restored that he would be prohibited from as result of the discipline assessed in letter dated July 22, 1980.

OPINION OF BOARD: Claimant, Yardmaster G. B. Vaughn, after investigation, was given a fifteen (15) day suspension following a hearing held on July 15, 1980. The Organization maintains that the suspension was improper for both procedural and substantive reasons.

First, the Organization argues that Carrier violated Rule 7b of the Agreement when it failed to hold a hearing on this matter within five days of the date Claimant was charged. Second, the Organization contends that Carrier failed to render a decision within ten (10) days of the hearing, as required by Rule 7(f).

Third, the Organization protests the role(s) played by Superintendent S. E. Hawkins in this case. According to the Organization, Claimant was denied an impartial hearing and the right to an independent review of the claim because Superintendent Hawkins conducted the hearing, decided, rendered and signed the notice of discipline, and acted as the first level appeals officer.

Furthermore, the Organization asserts that Carrier had no substantive basis to impose the fifteen day suspension on the Claimant. It argues that Claimant acted in conformity with generally accepted procedures on the day in question and that all of the witnesses, save Terminals Superintendent W. G. Spearman, supported the Claimant's position.

Carrier, on the other hand, contends that it complied with all procedural requirements of the Agreement in affording Claimant a fair and impartial hearing. Carrier argues that it scheduled a hearing more than five days after the notice of charges at the request of Engineer H. L. Wix and Brakeman R. D. Wallace who were necessary witnesses to the hearing. In fact, both witnesses had themselves been charged with certain rule infractions, thereby mandating their appearance. Claimant, in Carrier's view, was neither harmed nor prejudiced by this delay.

In addition, Carrier asserts that its decision after the hearing was postmarked within ten days of its occurrence, thus complying with Rule 7f. Furthermore, Carrier notes that nothing in the Agreement prevents one of its officers from fulfilling more than one role in the hearing and appeals process.

As to the merits of the claim, Carrier argues that the record contains substantial evidence to support Claimant's guilt. Thus, Carrier asks that the claim be denied in its entirety.

The claim must be sustained because of Carrier's failure to timely hold a hearing in accordance with Rule 7(b). That rule reads, in relevant part:

> If charges are made against a Yardmaster, he shall be granted a hearing within five days after notice before an officer not lower in rank than Superintendent or Terminal Superintendent...

Notice of the charge was given Claimant on June 3, 1980, with a hearing originally scheduled for June 5, 1980. At the Claimant's request, the hearing was postponed until June 7, 1980. However, on June 5, 1980 Carrier again postponed the hearing, at Brakeman Wallace's request to July 15, 1980, well beyond the five day limit of Rule 7(b). It is understandable that Carrier, having acceded to Claimant's request for a postponement would also agree to a similar request from Brakeman Wallace. However, Brakeman Wallace is not a party to this claim. The only parties, and thus the only individuals who could agree to a postponement, are Claimant (or his Organization, on his behalf) and Carrier.

Carrier argues that the Organization acquiesced in this postponement when it occurred and, therefore, that it was not unilateral. However, during the handling on the property, the Organization's General Chairman strongly argued that Claimant neither requested nor concurred in the postponement from June 5, 1980 to July 15, 1980 (see letter of August 10, 1980). Since this statement was not refuted by Carrier, we must conclude that the second postponement was unilateral.

Carrier's argument that Claimant was not prejudiced by the postponement is not on point. As this Board has noted on several occasions time limits of this type must be strictly enforced. They are not mere guidelines. They are procedural prerequisites to the imposition of discipline. See for example, Third Division Awards 23496, 19275.

In view of our finding on this issue, we need not consider other procedural arguments raised by the Organization, and we must sustain the claim as presented without reaching the merits of the case.

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 Employes 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 prosent oral argument.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST:

Nancy J. Dever
Acting Executive Secretary

Dated at Chicago, Illinois, this 14th day of January 1983.