

NATIONAL RAILROAD ADJUSTMENT BOARD  
FOURTH DIVISIONAward No. 4716  
Docket No. 4704  
89-4-88-4-47

The Fourth Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(American Railway and Airway Supervisors Association:  
( A Division of TCU

PARTIES TO DISPUTE: (  
(Boston and Maine Railroad

STATEMENT OF CLAIM: It is the Claim and request of the Petitioning Organization that:

1. Carrier has violated the Agreement, and in particular Rule 18 - Discipline, when as a result of a Hearing held January 27, 1987 they assessed discipline in the form of "Reprimand" to Mr. John A. Zelenski, Foreman, Central Division. Said discipline was unjust and unwarranted.
2. As a result of this violative action, Carrier be ordered to remove the reprimand from Mr. Zelenski's Record and that he be compensated for the two (2) days lost due to his on duty injury.

FINDINGS:

The Fourth Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or 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.

Parties to said dispute waived right of appearance at hearing thereon.

On September 26, 1986, the Claimant, an Engine House Foreman, slipped and fell while on duty, hurting his right wrist. He was off duty for four days immediately following the injury. He was subject to an investigation on the charge of violating Safety Rule S-8, as a result of which he was issued a Reprimand.

On April 7, 1987, in timely fashion, the Organization initiated a Claim on behalf of the Claimant, stating in pertinent part as follows:

"The transcript clearly shows that the charges brought by the carrier were not substantiated. Therefore, as was requested on page 16 of the transcript, by A.R.A.S.A./BRAC Union Representative Mr. F. Worth, 'that Mr. Zalenski be cleared of all charges and that all reference to this investigation be removed from his file', is still the position of the Brotherhood and the Brotherhood respectfully requests that it be done. Also, it is the Brotherhoods' position that Mr. Zalenski receive payment of two (2) days pay for lost time Saturday, September 27, 1986 and Sunday, September 28, 1986 at the Supervisors rate of pay."

The Carrier was thus on notice that a Claim had been filed both as to the disciplinary action and for loss of pay on two days subsequent to the incident.

The record clearly shows that the Carrier failed to meet the time limits for reply to appeal at various levels, as provided in Rule 16. During conference which eventually was held, the Carrier offered to lift the reprimand notice, but it did not address that part of the original Claim concerning the two days' pay. On this basis, the Organization brought the dispute to the Board.

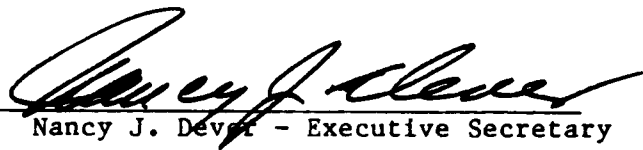
In order to maintain their respective positions as to an ongoing dispute, both parties are required to meet time limits which they set forth in Rule 18. The Carrier's failure to do so leaves the Board without recourse other than to sustain the Claim as originally presented. While the Claim does combine a protest of discipline with a protest as to loss of pay, this does not make it improper.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Fourth Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of September 1989.