PUBLIC LAW BOARD NO. 2287

AWARD NO. 1

CASE NO. 1

PARTIES TO THE DISPUTE:

Railroad Yardmasters of America

and

Consolidated Rail Corporation, Atlantic Region

STATEMENT OF CLAIM:

SYSTEM DOCKET NO. 632
ATLANTIC REGION - NEW JERSEY DIVISION CASE 10/c/77

Request that Yardmaster J. W. Jackson be restored to service as Yardmaster with all rights unimpaired and paid for all time lost. The time limits specified in Rule 4-G-1 shall be observed in accord with Rule 6-A-1.

OPINION OF BOARD:

Claimant J. W. Jackson was working on March 10, 1977 as Yardmaster at "A" Tower, Pennsylvania Station, New York. Following a confrontation with a trainman regarding train locations, Claimant told Assistant Trainmaster F. C. Petrone, in words or substance, that if he had to give train locations repeatedly he would be too sick to work the remainder of his shift. Petrone thereupon relieved Claimant of duty and orally took him out of service for "using the relief for avoiding orders from a Trainmaster". The next day, March 11, 1977, Claimant was notified by Assistant Superintendent-Passenger C. A. Toadvine, that he was disqualified as a Yardmaster in connection with

> Your conversation with a Trainmaster, F. Petrone, at about 9:00 p.m., March 10, 1977 in connection with you giving train information to a trainman.

Under date of March 14, 1977 the Local Chairman of the Organization filed with Claimant's immediate supervisor, Road Foreman-Trainmaster J. P. Gilmore, an appeal, alleging unjust treatment under Rule 6-A-1 with an attendant money claim under Rule 4-G-1, and seeking reinstatement as a Yardmaster together with payment for "all time lost". The claim letter specifically mentioned that the time limits of Rule 4-G-1 were applicable to the claim. Mr. Gilmore, the immediate supervisor, never did respond one way or another to that initial claim. Instead, by letter of March 17, 1977, Mr. Toadvine, the official who had disqualified Claimant, advised that a hearing would be held. At the hearing, Carrier adduced information and argumentation to show that the underlying complaints against Claimant actually were insubordination and malingering, although Claimant never was so specifically charged. To conduct the hearing, Carrier used Claimant's immediate supervisor, Mr. Gilmore, as Hearing Officer. Following the hearing, Mr. Toadvine reiterated his earlier disqualification of Claimant. The disqualification subsequently was appealed to Carrier's Manager-Labor Relations who, by letter of June 27, 1977, conceded that timely denial of the money claim had not been made. The Manager-Labor Relations offered payment of time lost from claim date through June 27, 1977, on which date he purported to deny the overall claim. Further appeal was taken by the Organization's General Chairman, urging inter alia that the claim had never been denied by the immediate supervisor as required by Rule 6-A-1. Failing resolution on the property, the matter has been referred to this Board for decision.

For reasons developed more fully below, we are constrained to dispose of this case on the basis of the invalid denial and accordingly to not reach nor express any opinion on the merits of the disqualification of Claimant.

Nor do we have occasion to reach the many other procedural arguments raised on the record.

This is another in a long line of cases involving Carrier improper denial of a "dual claim" (i.e., Rule 6-A-1 Reinstatement plus Rule 4-G-1 Back Pay), either through lack of timely denial or failure to follow the mandated appeal channels. This issue has been before arbitration boards with disconcerting regularity, as the parties have vied over the meaning and inter-relationship of Rules 4-G-1 and 6-A-1 in such claims. The result has been a line of "precedent" going both ways. We are hopeful that the present series of cases may be the last of this dubiously distinguished line, however, since the parties have only recently negotiated new appeal procedures to govern future cases.

One line of antecedent awards concludes that an improper denial of a dual claim may be cured belatedly by subsequent denial of the 4-G-1 portion. This line holds that the 4-G-1 aspect may be denied prospectively and liability limited to the period from claim date to date of belated denial. See Awards 3382 and 3602. The reasoning underlying such interpretation is developed and described in Award 3602. Basically that decision holds that the express language of Rules 4-G-1 and 6-A-1 must be read through an interpretive gloss supplied by the decisions of the bipartisan National Disputes Committee, which limit liability for so-called "procedural violations". Such rationale has the appeal of simplicity and apparent equity but must be rejected for several important reasons. First, as even Award 3602 recognizes, the Yardmasters Organization is not party or bound by the interpretations of the National Disputes Committee. Secondly, the lanaguage of the Rules under consideration herein is clear and unambiguous as it stands and does not grant the latitude for such arbitral legislation. The decision in Award 3602 concentrates

exclusively on the implications under Rule 4-G-1 of an untimely denial but begs the question by ignoring or not recognizing the mandate of Rule 6-A-1 that the "immediate superior" himself must respond in writing to a claim thereunder. (Emphasis added.) In the fact of an outright failure to comply with that patent requirement, within the time period specified in Rule 4-G-1, the Agreement itself requires that the claims be allowed. See Awards 4-3284 and 4-3559.

Carrier's labor relations professionals are knowledgeable regarding the requirements of the Agreement even though front-line supervision in this case was not. The Manager-Labor Relations attempted belatedly to cure the defect in handling by the immediate supervisor, but by that time it was too late. The Agreement states in unequivocal terms that the dual claim must be filed with the immediate supervisor who must respond to it in writing. Gilmore was the immediate superior, the dual claim was filed with him and his failure to answer that claim is fatal. Belated denials by other than the immediate superior cannot cure that defect. Carrier asserts, but offers no proof, that Gilmore himself issued a belated denial under date of June 3, 1977, some three weeks after the time limit had expired. Nor can Carrier find comfort in its theory that because it used Gilmore as Hearing Officer, due process and fairness required someone other than Gilmore to respond to the claim. The Agreement does not specify the identity of a Hearing Officer but Carrier cannot obviate the response requirement of Rule 6-A-1 by using the immediate superior in that capacity. Such an argument smacks of bootstrapping and is no excuse for the violation of Rule 6-A-1.

The principles governing this case are set forth with clarity and brevity in Award 4-3559 which dealt with an identical issue:

* * *

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.

* * *

Also, the decision in Award 4-3284 is directly on point, as follows:

* * *

The claim alleging "injustice" was also a claim for money alleged to be due and thus the time period specified in Rule 4-G-1 shall be observed. The claim was presented by the duly accredited representative and was not allowed. No written notification of disallowal was sent to the duly accredited representative within sixty calendar days from the date the claim was presented.

> The foregoing record establishes beyond cavil that Rules 6-A-1 and 4-G-1 (to the extent that the latter is incorporated by reference into the former) have been violated by the Carrier. In the facts and circumstances, and in the face of the express language of 4-G-1 we need not and do not reach the merits of Claimant's disqualification.
>
> Presented, the Agreement provides with unabated clarity that "When not so notified claims <u>will be allowed</u>" (Emphasis added). In the face of such clear and unambiguous contract language we must give effect to the provision exactly as it is written by the parties. To do otherwise would be to usurp in the name of interpretation the role of the draftsmen of the Agreement, and this we shall not do. Accordingly, and consistent with the mandate of the Agreement, we shall sustain the claim for reinstatement and compensation. We note in so holding that Rule 4-G-1 (h) specifies that the monetary adjustment "shall not exceed in amount the difference between the amount actually earned by (Claimant) and the amount he would have earned from the Company if he had been properly dealt with under the Agreement.

Such results might to a layman appear harsh or inequitable, or even to permit a "guilty" party to escape through a "technicality". If such be the case in individual applications, then the place to seek relief is at the bargaining table and not in the arbitration forum. We, no less than the parties, must take the contract as we find it. We cannot stretch one way or the other to provide our personal brand of "justice".

Based upon all of the foregoing, we conclude that Carrier failed to comply with the essential procedural requirement of Rule 6-A-1 within the time period specified in Rule 4-G-1. That being the case, the Agreement itself establishes the remedy, i.e., the claim must be allowed. Accordingly, without reaching the merits of the disqualification, we are obligated to order Claimant's reinstatement as a Yardmaster effective March 11, 1977, with compensatory or remedial damages consistent with Rule 4-G-1. Such monies, if any, already paid by Carrier to Claimant as damages for the period

March 11, 1977 to June 27, 1977 shall be offset against his recovery under this Award.

FINDINGS:

Public Law Board No. 2287, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;

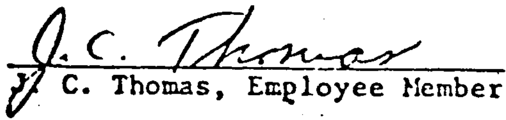
2. That the Board has jurisdiction over the dispute involved herein; and

3. That the Agreement was violated.

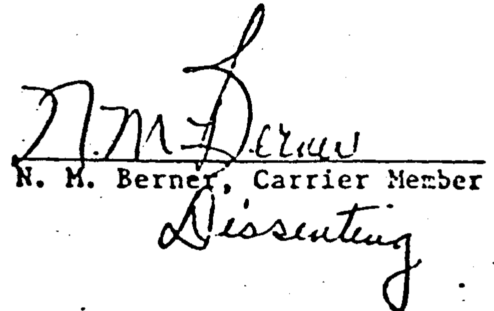
AWARD

Claim sustained to the extent indicated in this Opinion.

Dana E. Eischen, Chairman



J. C. Thomas, Employee Member



N. M. Berner, Carrier Member

Dissenting

Dated: Sept. 15, 1979