

PUBLIC LAW BOARD NO. 2287

AWARD NO. 3

CASE NO. 3

PARTIES TO THE DISPUTE:

Railroad Yardmasters of America

and

Consolidated Rail Corporation,  
Atlantic Region

STATEMENT OF CLAIM:

SYSTEM DOCKET 635  
NORTHEASTERN REGION - NEW ENGLAND DIVISION

Claim of Yardmaster R. A. King for reinstatement as yardmaster and paid for all time lost.

OPINION OF BOARD:

Claimant R. A. King was a promoted Brakeman serving as a Yardmaster at North Adams Junction, Pittsfield, Massachusetts. On the evening of September 17, 1976, he was removed from service by Trainmaster A. J. Fox and, by letter of same date, notified as follows:

I have, in the past, addressed several letters to you regarding your inefficiencies while performing the duties as Yardmaster at North Adams Junction, Pittsfield, Mass. I have also found it necessary to continuously approach you because of other employes' complaints and your handling of them; your continuous tardiness for reporting for work, your disregard for procedures for the welfare of the Company and complaints from customers. This A.M. your insistence that a crew perform work in the yard when the switcher was on duty; as well as not giving customers service as was arranged.

It is my judgment, as an official of Consolidated Rail Corporation, that you are not qualified to perform the duties of Yardmaster at North Adams Junction, Pittsfield, Mass.

Under date of September 21, 1976, Claimant filed with Trainmaster Fox a denial of the charges and requested restoration to his Yardmaster position with payment for "all time lost". Failing this, he requested an investigation as follows:

I received your letter of disqualification of me as Yardmaster at North Adams Junction, Pittsfield, Mass. today. I reject and deny the charges; I appeal to you to reconsider your action and to restore me to my position as Yardmaster with all rights unimpaired and that I be paid for all time lost.

If after reconsidering your charges you still feel the same, then consider this letter as a formal request for a hearing or investigation of your unjust action.

Trainmaster Fox, Claimant's immediate superior, did not answer that dual claim letter. But, under date of September 30, 1976, Claimant was notified by Trainmaster Roberts to attend a hearing which ultimately was held October 26, 1976. Following the hearing Claimant was advised on November 4, 1976 by Assistant Superintendent E. F. Granfield as follows:

Under date of September 17, 1976, Trainmaster Fox disqualified you from service as a yardmaster. Subsequently you filed an appeal to the disqualification by Trainmaster Fox.

On October 26, 1976, a hearing was held at Pittsfield, Mass., at your request. Nothing was introduced during the hearing to indicate that your disqualification as a yardmaster was either arbitrary or excessive, and the disqualification will stand.

Kindly acknowledge receipt of this letter on copy attached and return to this office.

No further communication was had until January 2, 1977 when the Local Chairman of the Organization notified Trainmaster Fox that time limits had expired under Rule 4-G-1 without denial of the claim filed by Claimant on September 21, 1976. The appeal of that procedural violation, together with a demand for specific money damages, was rejected by Mr. Fox on January 7, 1977

and then appealed by the Local Chairman to the Manager-Labor Relations on January 21, 1977, as follows:

Please accept this as a rejection and an appeal of Trainmaster A. Fox's adverse decision on time claim of Yardmaster Russell A. King. Mr. Fox failed to comply with the provision of Rule 4G1, paragraph 'C' in response to Mr. King's letter of September 21, 1976 wherein Yardmaster King claimed compensation for all time lost. Therefore, Mr. King should be paid the earnings of Head End Brakeman of NX12 for September 27, 28, 29, 30, October 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 1976.

Mr. Fox's claim that the provision of Rule 4G1 was fulfilled by his communication of September 24, 1976 to Mr. King (a form letter to Mr. King to appear at Pittsfield, Mass. on October 26, 1976 for an investigation) cannot be accepted as complying with Rule 4G1. Reference also to award No. 3284 of Fourth Division, Referee Eischen.

Please list this for discussion at our next monthly meeting.

That appeal was denied and, by letter of April 2, 1978, the General Chairman appealed to the Senior Director-Labor Relations, primarily on grounds that the immediate superior had failed to answer Mr. King's claim letter of September 21, 1976.

The General Chairman accordingly sought restoration as Yardmaster with "full back pay". The Senior Director-Labor Relations responded by letter of April 20, 1977 reading in pertinent part as follows:

In view of the fact that a proper appeal on behalf of Mr. King was never handled at the Manager-Labor Relations' level, your appeal of this case to this office must be considered procedurally defective and is not a subject that can properly be discussed with this office.

Without retreating from our position that the instant case is barred from being handled at this level, we have considered this case on its merits and find that your appeal on behalf of Mr. King is without merit.

We have carefully reviewed and studied the transcript of the hearing of October 26, 1976, and the case file. It is our position, supported by substantial evidence, that a sound basis existed for the disqualification of Mr. King and record of this case affords no valid basis for disturbing the discipline of disqualification placed against Mr. King.

At our meeting we advised you that we would pay Mr. King for all time lost from September 27 to October 20, 1976. This is in accordance with Vice General Chairman David E. Murphy's letter of January 21, 1977, which only requested that Mr. King be allowed all time lost for this period. Payment is being made solely on the basis that the claim for this period was not denied within sixty (60) days as is required by Rule 4-G-1. It is important to note that this was the only subject having to do with Mr. King's disqualification that was appealed to the Manager-Labor Relations.

The remaining portion of the claim for time lost and your appeal on behalf of Mr. King is denied in its entirety.

We are faced at the outset in this case with countervailing procedural arguments. Carrier urges us to dismiss the Rule 6-A-1 aspect of the case on grounds that the Local Chairman failed to handle that issue on the property; and to dismiss the Rule 4-G-1 time limits aspect on grounds of mootness since Carrier has already paid the claim dates specifically sought on appeal by the Local Chairman. The Organization argues that Carrier is clouding the real issues and that the dual claim must be paid as presented with reinstatement and full back pay because of the time limit violations through the failure of the immediate superior to deny the initial claim.

But for the Local Chairman's contested appeal letter seeking specific damages for the time limits violation, this case would present the same issues as were decided in our Awards Nos. 1 and 2. In those cases, we pointed out that for dual claims Rules 6-A-1 and 4-G-1, to the extent the latter is incorporated by reference into the former, expressly require notice of disallowance by the immediate superior within sixty (60) days.

We also indicated that the penalty for failure to comply with that mandate is self-operating because of the clear words of the Agreement, i.e.: "when not so notified, claims will be allowed". Thus, when Trainmaster Fox failed to answer the dual claim within sixty (60) days, the Agreement requires that such claim be allowed. The only novel question presented by this case is whether the January 21, 1977 appeal letter of the Local Chairman obviates or limits Claimant's recovery for the procedural violation. Otherwise, this case is directly on all fours with that decided in our Award No. 2. Carrier insists that the Local Chairman's appeal letter constituted an abandonment of the dual nature of the claim presented by the Claimant on September 21, 1976. Carrier urges that by citing the time limits of Rule 4-G-1 without specifically referencing Rule 6-A-1, the Local Chairman on January 21, 1977 waived the claim for reinstatement and in effect proposed settling the back pay claim by payment for certain dates. Thus, Carrier maintains that the Rule 6-A-1 issue is not properly before us and the Rule 4-G-1 back pay issue was settled on the property.

With respect to the reinstatement aspect of the case, we cannot agree with Carrier's view. Although the Local Chairman's letter is not a model of clarity, it does incorporate by reference Claimant's dual claim letter, it does protest the failure of the immediate superior to answer same, and it does cite the requirement that "when not so notified, claim will be allowed" (emphasis added). The question must be asked, what claim must be allowed? The only claim then pending was the dual claim filed by Claimant King for reinstatement plus back pay "for all time lost". There is no doubt that Carrier's Manager-Labor Relations understood this to be an appeal of both aspects of the dual claim, because in his denial letter

of February 22, 1977 he expressly cited both Rule 4-G-1 and Rule 6-A-1. We would be treating illusion as reality if we held that the reinstatement aspect of the claim was abandoned or not handled at the Manager-Labor Relations level of appeal.

For reasons developed fully in Award No. 1, the failure of the Trainmaster to deny or disallow the dual claim is fatal under Rules 4-G-1 and 6-A-1. The only question remaining is the appropriate remedy for such violation. The Rules as we have pointed out elsewhere, are self-operating in such situations and require both reinstatement and payment of "compensation alleged to be due". See Award Nos. 1 and 2; see also Awards 4-3284 and 4-3559. In connection with the "compensation due", however, the Local Chairman's letter of January 21, 1977 is significant. Under these Rules, the amount of money damages in a given case is a matter for Claimant to plead and establish. In the instant case, we find that such damages must be limited to the specific liquidated amount demanded by the Local Chairman in his letter of January 21, 1977. So far as our record shows, that amount has been paid and received by Claimant. Accordingly, we shall direct his reinstatement as Yardmaster but will award no further money damages. This decision is based solely upon the time limit violation by the immediate superior. No opinion is expressed or implied regarding the merits of the disqualification.

FINDINGS:

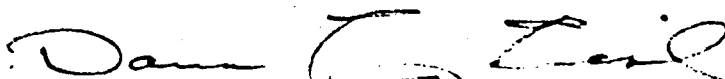
Public Law Board No. 2287, upon the whole record and all of the evidence, finds and holds as follows:

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

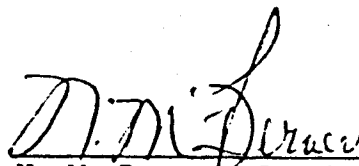
- 2. That the Board has jurisdiction over the dispute involved herein;
- and
- 3. That the Agreement was violated.

AWARD

Claim sustained to the extent indicated in the Opinion.

  
 Dana E. Eischen, Chairman

  
 J. C. Thomas, Employee Member

  
 N. M. Berner, Carrier Member  
 Dissenting

Dated: Sept. 15, 1979