

Award No. 1404
Docket No. 1313
2-CB&Q-EW-'50

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee E. B. Chappell when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 95, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That G. J. Rohrbaugh be restored to service in the Telegraph Department with seniority rights unimpaired and compensated for all time lost since March 3, 1947, when he was removed from service without justification under current agreement rules.

EMPLOYES' STATEMENT OF FACTS: G. J. Rohrbaugh was employed as an (electrical worker) lineman in the telegraph department of the carrier with system seniority as such and assigned to perform electrical work in the telegraph department under the supervision of Foreman Johns.

G. J. Rohrbaugh and other linemen working under the supervision of Foreman Johns were provided outfit cars for living purposes by the carrier.

On March 3, 1947, G. J. Rohrbaugh was taken out of service by Foreman Johns.

On March 21, G. J. Rohrbaugh was given an investigation, conducted by Supt. H. H. Hasselbacher of telegraph department, on the charge that he refused to eat his meals in the dining car attached to the outfit cars in which he was stationed.

In spite of his objections, carrier deducted 75 cents per meal, three meals per day, from his pay check, despite his refusal to eat them.

There is no rule in the agreement now in effect permitting the carrier to make kick-back deductions from an employe's pay.

The carrier agrees that claimant is a qualified telegraph lineman and that his work in that capacity was satisfactory, as evidenced by transcript of the investigation. However, carrier refuses to restore claimant to service unless he agrees to eat his meals in company dining car and agrees to permit carrier to deduct 75 cents per meal from his pay.

Carrier has a contract with the American Boarding & Supply Co. permitting that concern to operate dining cars attached to outfit cars housing its electrical worker employes in the telegraph department. Carrier com-

SUMMARY

If, as the petitioner contends, Rohrbaugh was dismissed from the carrier's service—which the carrier denies—the Board cannot assume jurisdiction because the dispute was not handled in the "usual manner" which is a prerequisite to submission to the Second Division, National Railroad Adjustment Board.

If, as the carrier contends, Rohrbaugh of his own volition, breached the long existing individual contract of employment, to which he and the respondent carrier were the parties, he cannot now seek damages because of a condition entirely attributable to his own action.

In the light of the record, this claim cannot be sustained.

FINDINGS: The Second 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 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.

On March 3, 1947, claimant was taken out of service by his foreman for refusal to obey a long established carrier rule requiring construction line-men, under certain conditions, to eat their meals in the outfit dining car facilities provided for them by the carrier. On March 7, 1947, he made written request for an investigation as required by Rule 21. By letter notice the request was granted and hearing set for March 21, 1947, at 10:00 a.m. Such an investigation was then held under and in conformity with Rule 21 as requested.

Claimant, his authorized representative, and witnesses who testified for him were present at the investigation. Thereafter on March 22, 1947, claimant was notified in writing that his work was satisfactory and if he wished to resume service with seniority rights unimpaired, he might do so upon condition that he would abide by reasonable rules established by the carrier, including the rule pertaining to use of the outfit dining car facilities. However, claimant refused to accept such conditions and assuming that he had been "dismissed," did not return to service.

Rule 21 (b) provided that the provisions of Rule 20 should "be applicable in connection with appeals and time within which appeals shall be made in cases involving discipline or dismissal."

Without doubt the record discloses that this was a case "involving discipline or dismissal" within the provisions of Rule 21 (a) and (b). Claimant made written request for an investigation in connection with his "termination of employment." The transcript discloses that the investigation was held "under Rule 21 of the agreement," and verifies that claimant admittedly had "a fair and impartial hearing."

Rule 20 made applicable to such cases by Rule 21 (b) provided that appeal from the Superintendent of Telegraph "to the next succeeding higher officer to whom appeals are to be made," must be taken within thirty days which was not done in this case. The record establishes beyond dispute that carrier's General Manager was the officer to whom appeals must ultimately be taken as having final authority in handling discipline cases, and that petitioner's General Chairman, at all times here involved, had full knowledge of that fact. No appeal was ever taken to the "next succeeding higher

officer to whom appeals are to be made," or to the carrier's General Manager, "the chief operating officer of the carrier designated to handle such disputes" as required by the pertinent procedural rules of the agreement, and Section 3 (i) of the Railway Labor Act as amended. Further the time limit for taking such appeal has long since expired.

Therefore, the Division has no alternative except to dismiss the claim for want of authority to hear and determine it upon the merits. Awards of this Division, too numerous to cite, have consistently so held under comparable circumstances.

AWARD

Claim disposed of per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 31st day of July, 1950.