

Award No. 1510
Docket No. 1438
2-GC&SF-CM-'52

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Jay S. Parker when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

GULF, COLORADO & SANTA FE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Carman J. C. Knowles was unjustly discharged from the carrier's service at 12 Noon, December 22, 1950.

2. That accordingly the carrier be ordered to restore the aforesaid carman to service with seniority rights unimpaired and compensated for all time lost retroactive to 12 Noon, December 22, 1950.

EMPLOYEES' STATEMENT OF FACTS: Carman J. C. Knowles, hereinafter referred to as the claimant, was regularly employed by the carrier as such at Galveston, Texas, until 12:00 Noon, December 22, 1950. The claimant entered the service of the carrier May 4, 1944, as a carman.

On December 4, 1950, the claimant was required to submit to question and answer investigation, copy of which is submitted herewith and identified as Exhibit A.

On December 22, 1950, this claimant was notified by Master Mechanic D. J. Everett, that he was, effective at 12:00 Noon, December 22, 1950, dismissed from the service of the Gulf, Colorado and Santa Fe Railway Company. Copy of discharge notice is submitted herewith and identified as Exhibit B.

The discharge of this claimant has been handled in accordance with the current agreement up to and including the highest designated carrier officer who all declined to adjust the dispute.

The Agreement effective August 1, 1945, and subsequently amended is controlling over this dispute.

POSITION OF EMPLOYEES: It is respectfully submitted that within the meaning of Rule 33-(a), reading in part—

"Should an employe whose wages and working conditions are governed by this agreement believe that he has been unjustly dealt

Smoking on duty on the repair track, where there is necessarily a heavy concentration of inflammable material and equipment is a hazard to its property which the carrier is certainly within its rights to prohibit, and to expect the employees to live up to such prohibition.

CONCLUSION

There can be no question but that Mr. Knowles was absent from duty without permission on November 24, 1950, contrary to the first requirement of Rule 20, or that he made no effort to notify his foreman, as he was obligated to do by the second requirement in Rule 20.

Such is the present guilt and prior record of the man whom the employees are asking this Board to reinstate to service, and pay for all time lost. It is the position of the carrier that the Board should not reinstate this man under any condition. His record for observance of agreement rules and carrier's instructions is bad, to say the least. His attitude has been that he is a law unto himself and that he will do as he pleases without regard to his obligations under the rules of the agreement or the carrier's bulletined instructions. He has shown no appreciation of his former reinstatement by the carrier, following his dismissal for the same offense here involved, as witness the fact that within three months after reinstatement he twice violated the same rule, and has done so again in this case. The carrier has no reason to believe that he has changed his attitude; to the contrary, if the Board should interfere with this just and necessary discipline, there is every reason to believe that Knowles will become a more serious problem to the carrier than he has been in the past.

In this connection, the carrier repeats its contention that the claim in favor of Mr. Knowles be denied, first, because it is not properly before the Second Division of the National Railroad Adjustment Board on two counts; viz. It was not handled in the manner provided by the Railroad Labor Act and was not appealed in the time limit stipulated by paragraph (b) of Rule 33 of the controlling agreement. Secondly, as far as the records are concerned, the evidence is crystal clear that Knowles was guilty as charged, in view of which and his generally unsatisfactory record the claim should be denied.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

This claim was handled on the property in accord with the requirements of Rule 33 (b) of the current agreement where it was ultimately appealed to the carrier's highest reviewing officer and denied by that official by a letter, dated May 7, 1951. Thereafter, the dispute was referred to this Division by the employees under date of August 8, 1951.

The last sentence of paragraph (b) of Rule 33 reads:

"Should the employee himself or the General Chairman be dissatisfied with the decision rendered by the highest designated officer and further appeal is desired, the case may then be handled in accordance with the Railway Labor Act, providing such appeal is made within ninety (90) days after date of decision."

At the outset, by objection raised by the carrier, we are called upon to determine whether the case should be dismissed for failure to bring it here within time.

On resort to the calendar it becomes apparent from the foregoing statement that the claim was not filed with this Division **within** ninety days **after the date** of the decision of the carrier's final officer of appeal. Obviously recognizing this to be true the employees on rebuttal contend in substance that the decision of May 7, 1951, was not final because the dispute was reopened for further consideration and the claim was not finally denied by the carrier until June 12, 1951. The basic trouble with the employees' position on this point is that the record fails to sustain or support it. Therefore, in the face of the confronting facts and circumstances, all we can do is to hold that failure to file the claim with the Board within the time required by the agreement precludes its consideration and requires its dismissal.

AWARD

Case dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman,
Executive Secretary

Dated at Chicago, Illinois, this 10th day of January, 1952.