

Award No. 1586
R.E.D. Case No. 2298
2-GC&SF-CM-'52

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Upon failure of the Division to agree upon its jurisdiction to docket, hear and decide this case submitted by the Railway Employees' Department, A. F. of L., the Division selected The Honorable Edward F. Carter, as referee to break the deadlock, as provided in Section 3, First (L) of the Railway Labor Act.

Following is the case in question, the opinion and award of the Second Division with Referee Carter sitting as a member thereof.

PARTIES TO DISPUTE:

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

GULF, COLORADO AND 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 12:00 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 sixty days from February 7, 1952, and all time lost subsequent to February 7, 1952.

OPINION OF THE DIVISION: Claimant contends that he was unjustly dismissed from the service of the carrier on December 22, 1950 and demands that he be returned to service with seniority rights unimpaired and be paid for time lost. The Division is deadlocked on whether or not claimant should be entitled to docket his claim.

It appears on the face of the record that the same claim was previously presented to this Division, docketed under number 1438 and resulted in Award 1510. By this award, the Board dismissed the claim for the reason that an appeal was not taken to this Board within ninety days after the denial of the claim by the highest designated officer of the carrier as required by Rule 33 (b), current agreement. An interpretation of the award was requested and the Board in so doing said "that the failure of the claimant to file the claim with the Board within the time prescribed by paragraph (b) of Rule 33 of the current agreement precluded consideration of such claim and required that it be dismissed." See Interpretation No. 1 to Award 1510.

The award and interpretation thereof constitute a final determination of the claim. This is so even if it be a continuing claim. The failure to

appeal within the time fixed by the cut-off rule is equivalent to an acceptance of the decision of the carrier. It is final and conclusive of all matters arising out of the alleged breach of the agreement.

Where it appears on the face of the record, including the previous records of the Board involving the same dispute, that no unadjusted dispute exists, the Board should refuse to docket the claim. To do otherwise would be a vain thing and only tend to encumber the records of the Division.

AWARD

Leave to docket denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of November, 1952.