

Award No. 4719

Docket No. 4599

2-PRR-MA-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Machinists)**

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That the Carrier unjustly suspended Machinist G. E. Tenny, on August 15, 16, 17, and 18, 1962.

2. That the Carrier be required to compensate Machinist G. E. Tenny for eight (8) hours at the applicable rate for each of the dates specified, and remove the notation of discipline from his record.

EMPLOYEES' STATEMENT OF FACTS: Machinist G. E. Tenny, hereinafter referred to as the claimant, is regularly employed by the Pennsylvania Railroad Company, hereinafter referred to as the carrier, as a machinist, at the carrier's Enola Diesel Shop.

The instant case involves two separate charges against the claimant, one resulting in a suspension of three days, and the other resulting in a suspension of one day. The suspensions were assessed against the claimant on consecutive days of August 15, 16, 17, 18, 1962.

On April 26, 1962, Assistant Foreman F. D. Hamelchle took an investigation statement from claimant in connection with an injury claimant had sustained on April 19, 1962. On the same day, he also took investigation statements from three other employes, namely, Electrician R. W. Irvin, Electrician F. W. Gates, and Machinist H. A. Trichler, all in connection with the same injury.

In a notice dated May 2, 1962, Claimant was ordered to stand trial on May 4, 1962, in connection with this same injury, on the charge "Violation of Safety Rule 4073 and 4083, resulting in personal injury."

Claimant attended the trial and, as is usual in such cases, a transcript of the trial proceedings was reduced to writing and presented to claimant for his signature, signifying that the trial record was accurate and that the trial had been conducted in a fair and impartial manner. Claimant, however, refused to sign the transcript, objecting that the transcript was not an accurate record of the trial proceedings, and that he had not been given a fair and

fore your honorable board. Therefore, the carrier respectfully requests the Board to dismiss or deny it. In support of this request, the carrier quotes excerpts from previous cases which involved the application of Article V of the August 21, 1954 Agreement (or a comparable rule) in discipline matters and in which appropriate awards were rendered:

Second Division Award 3280 (James P. Carey, Jr.)

"* * * Since the Master Mechanic discharged Eggert, the proper step for seeking relief from the carrier's action was to appeal to the District Master Mechanic which was done by the claimant within the required time. We think the claimant satisfied the purpose and intent of Article V. The claim for reinstatement and payment for time lost was seasonably and properly presented to the carrier and the carrier was required to disallow it in writing within 60 days from May 7, 1956 if it desired to do so. The claim was disallowed more than 60 days after it was filed, under the provisions of Article V, Section 1 (a) of the August 21, 1954 Agreement the claim must be allowed. The claim for actual loss of wages from March 9, 1956 to August 13, 1956 is allowed minus the amount of outside earnings during that period, if any, as contemplated by Rule 36 of the applicable agreement."

Second Division Award 4027 (Howard A. Johnson)

"The claim was not presented in accordance with Rule 34 (a) within the time limited by Article V of the August 21, 1954 Agreement, and the objection was not waived by the Carrier but on the contrary was raised by it at the first opportunity. Not being a valid claim it is not properly before us and must be dismissed."

Third Division Award 8476 (William H. Coburn)

"We find and hold that when Claimant failed to exercise his right of appeal under Article 10, he thereby forfeited his right to bring the claim before this Board and foreclosed consideration of that claim under any other provisions of the Agreement. The express language of the contract here permits of no other interpretation.

Claim should be dismissed."

Third Division Award 8501 (Carroll R. Daugherty)

"* * * the Board is compelled to apply the plain language of Article VII, Section 4. The Organization's appeal to the next higher officer above Baker was not timely under said language. * * *"

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.

Parties to said dispute were given due notice of hearing thereon.

The claim is that Tenny was unjustly suspended on the dates stated in the claim. Whether that is true depends upon the propriety of disciplinary suspensions given him on May 11 and 24, 1962, which were reduced to three days and affirmed respectively on appeal by decisions on June 26 and July 9, 1962.

This claim was not filed until September 8, 1962, so it was not filed within the time limited by Rule 4-0-1.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 19th day of May, 1965.