

Award No. 5308

Docket No. 5092

2-LI-SM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 156, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Sheet Metal Workers)**

THE LONG ISLAND RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(a) That the Carrier violated the controlling agreement between the Long Island Rail Road Company and System Federation No. 156, and particularly Rules 35 and 36 thereof, when the Carrier removed Mr. Robert J. Dibble from service on February 15, 1965. This was judged on a charge of being "Unfit for Service", which violated Rule 35(d). Mr. Robert J. Dibble, hereinafter referred to as the Claimant was denied his right to appeal to the Chief Mechanical Officer, which violated Rule 36(a).

(b) That this claim is a continuing claim and will continue until satisfactorily disposed of in its entirety.

1. Restore the Claimant Robert J. Dibble to service with all seniority rights unimpaired.
2. Compensate Claimant Robert J. Dibble for all time lost.
3. Make Claimant Robert J. Dibble whole for all vacation rights.
4. Pay the premiums for Hospital, Surgical and Medical Benefits for all time held out of service.
5. Pay the premiums for Group Life Insurance for all time held out of service.

EMPLOYEES' STATEMENT OF FACTS: (a) That the Claimant was afforded a trial by Mr. H. V. Tozer, General Locomotive Foreman at Morris-park, on November 30, 1964, which was not considered by the Claimant and the Local Chairman as a fair and impartial trial.

(b) That the Claimant was removed from service by the Carrier February 15, 1965, on a discipline notice "Form G-32" which was dated January 8, 1965. This notice was received by the Claimant on date of February 3, 1965,

For the reasons set forth herein, the claim is without merit and should, therefore, 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.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant, a sheet metal worker, was dismissed for being intoxicated while on duty on November 2, 1962.

Carrier contends that this dispute is not properly before this Board since Petitioner failed to comply with Paragraph (a) of its Agreement of May 15, 1956, amended March 1, 1960, with the Organization. That provision stipulates that appeals for disciplinary action must be "presented to the General Mechanical Superintendent, * * * in writing, within ten (10) days from the date he receives the discipline notice." That Claimant received notice of his discharge on February 3, 1965, is undisputed. The letter of appeal to the Chief Mechanical Officer was dated February 12, 1965, but postmarked February 15, 1965 and received February 16.

The controlling provision is definite and unambiguous in its requirement that the appeal must be "presented" to the Superintendent within ten days from the day discipline notice is received. Under the normal use of the language quoted above, it is entirely clear that the appeal in question was not "presented" within the prescribed ten day period.

Time limit requirements agreed upon by the parties must be strictly enforced and we have no alternative under the circumstances of this case but to dismiss the claim. A contrary result could be reached only by doing violence to the plain language of paragraph (a) of the Agreement of May 15, 1956.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 24th day of October 1967.