Award No. 6144
Docket No. 6000
2-DT&IR-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John J. McGovern when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

DETROIT, TOLEDO & IRONTON RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

(1) That under the current agreement Carman Upgrader Douglas S. Butts was unjustly dismissed from the service of the Carrier on January 3, 1969 at Flat Rock, Michigan.

(2) That accordingly the Carrier be ordered to reinstate the Claimant to his regular position from which he was discharged on January 3, 1969 with his seniority and vacation rights unimpaired, compensated for all time lost retroactive to January 3, 1969 until January 28, 1969, inclusive, without loss of hospital or Association hospital surgical and medical benefits, for all time held out of service.

EMPLOYES' STATEMENT OF FACTS: Douglas S. Butts, hereinafter referred to as the claimant, was employed by the Detroit, Toledo and Ironton Railroad Company, hereinafter referred to as the carrier, as a carman upgrader, working hours of 7:30 A. M. to 4:00 P. M., at repair track, at Flat Rock, Michigan, where the carrier maintains a car repair track and a diesel house.

On January 4, 1969 the claimant was given a written notice dated January 3, 1969 discharging the claimant from service, alleging that the claimant was insubordinate on January 3, 1969 at approximately 8:15 A. M.

The local chairman, J. C. Ward, wrote to the carrier's general car foreman, Mr. Gene Phillips, under date of January 8, 1969, requesting a hearing, as provided by Rule 28 of the current working agreement. On January 14, 1969, the letter was acknowledged by the carrier's general car foreman, and the hearing was scheduled for and held at 1:00 P. M., Friday, January 17, 1969.

As a result, the claimant was given a registered letter dated January 23, 1969, over the signature of the assistant superintendent of equipment, E. F. Reich, advising in essence that the claimant had been suspended from service

The contention that the charges were vague is not supported by the record. The letter dated January 3, 1969 specifically outlines the charges.

In regard to the organization's contention that Rule 28 was violated when Mr. Butts was held out of service, the board's attention is directed to that part of Rule 28, paragraph (a), which reads as follows:

> "(a) . . . If the final decision involves serving time and the employe has been held out of service pending final decision, the time so held out of service shall be applied on the discipline."

Subject quote supports the carrier's position that Mr. Butts was properly held out of service.

It is important to note that the organization relies on unsupported technicalities and that it does not dispute the carrier's position that Mr. Butts is guilty of insubordination as charged.

The carrier has conclusively shown that the case should be dismissed by the board in view of its untimely presentation pursuant to the rule and that the discipline assessed is warranted and justified.

The carrier requests the board's concurrence with its position and requests that the discipline not be disturbed.

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 waived right of appearance at hearing thereon.

This case involves an appeal from discipline invoked by Carrier after an investigation had been conducted.

The January 23, 1969 decision of the Carrier was appealed by Petitioner on March 17, 1969 and the May 6, 1969 Carrier decision was not appealed until June 30, 1969, both violations of that portion of Rule 28 which reads:

> "Notice of appeal shall be given within thirty (30) days of the date of the decision to be appealed, otherwise the decision shall be final."

To sustain this claim would do violence to the clear, precise, and unambiguous language of the above quoted rule. We have no alternative other than to dismiss the claim.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April, 1971.

LABOR MEMBERS' DISSENT TO AWARD 6144

Portion of time liimts in Rule No. 28 which was in effect on the Detroit, Toledo and Ironton Railroad Company prior to January 1, 1955, which reads:

> "Notice of appeal shall be given within thirty (30) days of the date of the decision to be appealed, otherwise the decision shall be final."

was used by the Majority as the basis for the dismissal of the claim in the instant award.

The following is portions of the current Time Limit Rule in effect on the Detroit, Toledo and Ironton Railroad Company:

> "4. A new Rule 30½ shall be added, effective January 1, 1955, reading as follows:
>
> RULE 30½.
>
> TIME LIMIT ON CLAIMS AND GRIEVANCES
>
> 1. All claims or grievances arising on or after January 1, 1955 shall be handled as follows:
>
> (a) All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.
>
> (b) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance, and the representative of the Carrier shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed, but this shall not be considered as a precedent or waiver of the contentions of the employes as to other similar claims or grievances. It is understood, however, that the parties may, by agreement, at any stage of the handling of a claim or grievance on the property, extend the 60-day period for either a decision or appeal, up to and including the highest officer of the Carrier designated for that purpose.
>
> (c) The requirements outlined in paragraphs (a) and (b), pertaining to appeal by the employe and decision by the Carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Carrier to handle such disputes. All claims or grievances involved in

a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employe or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the 9 months' period herein referred to.

* * * * *

3. * * *. However, no monetary claim shall be allowed retroactively for more than 60 days prior to the filing thereof. With respect to claims and grievances involving an employe held out of service in discipline cases, the original notice of request for reinstatement with pay for time lost shall be sufficient.

* * * * *"

The Carrier's proposal No. 7 that resulted in the above portions of quoted Rule No. 30½, was served on the Employes by the Detroit, Toledo and Ironton Railroad in accordance with Section 6 of the Railway Labor Act, as amended. As a result, the Carrier does not enjoy the option of now applying the time limits they had prior to January 1, 1955, such as contained in Rule 28 quoted above.

It can readily be seen that the findings and conclusions of the Majority do violence to the current Time Limit Rules in effect and accordingly we dissent.

O. L. Wertz
D. S. Anderson
R. E. Stenzinger
E. J. Haesaert

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