

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

Parties to Dispute: { Kimberly Shanks
 {
 { Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employees:

This claim involves the wrongful termination of Mr. Kimberly Shanks, carman for the Atchison, Topeka and Santa Fe Railroad.

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 were given due notice of hearing thereon.

Claimant, Mr. Kimberly Shanks, entered the services of the Carrier, the Atchison, Topeka and Santa Fe Railway Company on June 15, 1977 as a Relief Messenger at Topeka, Kansas. After subsequently working as Laborer, Carman Apprentice and Freight Carman, Non-Seniority, Claimant was notified on February 14, 1980, that, as a result of a formal investigation held on that day, relating to his alleged violation of Rules 14 and 16 of Form 2626 Standard, "General Rules for the Guidance of Employees", 1978 Edition, he was being assessed 20 demerits. Since Claimant's personnel record now stood with an accumulation of 70 demerits, he was notified on February 19, 1980 (after additional formal investigation on that date) that he was removed from Carrier's service for his violation of Rule 31H of Form 2626 (Ibid.) which stipulates that an employee is subject to dismissal for 60 or more accumulated demerits.

After appeal by the Claimant, the instant case was subsequently heard in formal, open hearing before the National Railroad Adjustment Board, fully assembled, with the instant referee present.

There are two issues before the Board in the instant case. The first is the jurisdictional question of whether this case is properly before the Board in the first place, i.e. of whether there has been a contravention of Rule 39 of the

Agreement between the Carrier and the Brotherhood of Railway Carmen (amended August 22, 1979, effective November 1, 1979), and/or of Sec. 3, First (i) of the Railway Labor Act. The second question, relating to the merits of the case, is properly subject-matter of the Board only to the extent that the jurisdictional question is affirmatively and positively rendered in favor of the Claimant.

A complete analysis of the record related to the procedural manner in which this case was appealed indicates that there was violation of Rule 39 (a) and (b) of the Agreement between the Carrier and the Organization by the Claimant since the appeals by the same were not handled in a timely manner with the appropriate Carrier officers authorized to receive such. In addition, the appeals were not handled "in the usual manner" between Claimant (with representation) and the Carrier as required by Sec. 3, First (i) of the Railway Labor Act, since these appeals were not discussed in conference on property between Claimant (with representation) and authorized Carrier officers. Notwithstanding the possible merits of the case, Claimant could have potentially avoided the procedural pitfalls had he resorted, in his appeals, to assistance from his Organization which is assuredly abundantly familiar with both the requirements of the Railway Labor Act and the Agreement under which the Claimant was protected rather than private counsel who, apparently, was not sufficiently privy to either of these documents. Claimant chose not to do this, however, for reasons of his own.

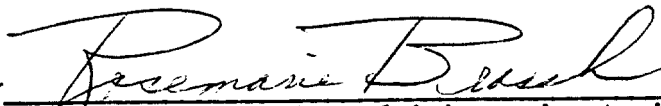
Numerous awards by this Board support the instant position that Claimants should exhaust all means available in their appeals in terms of timely conferences, on property, with appropriate officers before a case appears before the Board itself (See inter alia Second Division Award 6555; Third Division Awards 17166, 19620, 19709 et alia; and Fourth Division Award 3511).

A W A R D

The Board dismisses the instant claim without expressing any opinion on the merits of the case.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of April, 1982.