

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Chicago, Milwaukee, St. Paul and Pacific Railroad Company

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company did unjustly dismiss Carman Jerry L. Moore from the service on April 9, 1979 as result of a hearing held on March 5, 1979.
2. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to restore Carman Jerry L. Moore to the service with seniority rights unimpaired.
3. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to make Carman Jerry L. Moore whole for all rights and benefits that are a condition of employment, such as, but not limited to, seniority, vacation, holidays, medical, surgical, dental, and all group life insurance benefits.
4. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to compensate Carman Jerry L. Moore for all lost time as result of his unjust dismissal from the service.
5. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to reimburse Carman Jerry L. Moore for all losses sustained on account of loss of coverage under health, medical, welfare, and life insurance benefits during such time as he is held out of service.
6. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to award interest at the 6% rate per annum to Carman Jerry L. Moore for any and all payment he may receive as result of this claim.

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

Claimant Jerry L. Moore was notified to appear for a hearing on February 22, 1979 with charges of failure to protect his assignment on specified dates and failure to report to work on time on specified dates. Subsequently, because Claimant was hospitalized, the hearing was rescheduled for March 5, 1979.

The formal hearing was convened at the scheduled hour on March 5, 1979, but Claimant failed to appear at that hearing. The Union Representative requested that the hearing be again postponed, because of Claimant's absence, until such time as Claimant could attend. The Carrier's Hearing Officer at the March 5, 1979 hearing denied the requested postponement when Claimant failed to appear 30 minutes after the scheduled hearing was to commence and had given no notification that he could not attend the hearing. The Union Representative then left the proceedings.

Based on the testimony developed at the hearing on March 5, 1979, the Carrier notified Claimant by letter of April 3, 1979 that the charges having been sustained, Claimant's services with the Carrier would be terminated effective at the close of shift on April 9, 1979.

By letter dated April 10, 1979, the instant claim was instituted on behalf of Claimant on the ground that Claimant was unjustly removed from the service of the Carrier in violation of Rule 34(g), that proscribes dismissal of an employee who has been in the service 30 days without first having been given a fair and impartial hearing. The claim was denied by letter dated April 17, 1979 from Shop Superintendent J. V. Sands.

Local Chairman advised Sands by letter dated May 29, 1979 that the declination of the claim was unacceptable and that he would further appeal the claim through the Organization to the next highest Carrier Officer.

Subsequently, by letter dated June 21, 1979, the General Chairman appealed the claim to F. A. Upton, Assistant Vice President--Mechanical. Mr. Upton responded to the General Chairman by letter dated August 2, 1979, pointing out that the claim had not been properly handled in accordance with the provisions of Article V of the August 21, 1954 Agreement, and was barred in that the claim was not appealed to the Assistant Vice President--Mechanical within sixty days from the date the claim was declined by Mr. Sands, i.e., April 17, 1979. Additionally, Upton noted other reasons for denying the claim on its merits, contending that there had been a fair and impartial hearing as provided by Rule 34(g).

The General Chairman advised Upton by letter dated August 10, 1979, that he would appeal to the next highest designated Carrier officer, and such appeal was effectuated by letter dated August 15, 1979.

Mr. Merritt, Asst. Vice President, Labor Relations, advised the General Chairman by letter dated October 9, 1979 that the appeal was barred for the reason earlier given to Upton. Merritt noted that there was nothing in the entire record of the case to the date of his letter indicating any reason why Claimant could not be present on the date of the scheduled hearing and emphasized that Claimant's decision not to appear at the investigation and defend himself against the accusations of the Carrier was of his own choosing. Merritt

also denied the claim on its merits inasmuch as it was his position that the transcript substantiated the charges preferred against Claimant and the dismissal action took into consideration the seriousness of the proven offenses and Claimant's past poor attendance record and relatively short length of service (approximately six and one-half months).

Article V of the August 21, 1954 Agreement provides, in pertinent part:

"(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 or the contentions of the employees 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."

In the instant case the appeal was not taken within sixty days from receipt of notice of disallowance, the representative of the Carrier was not notified in writing within that time of the rejection of his decision, and the parties did not agree to extend the 60-day period for an appeal.

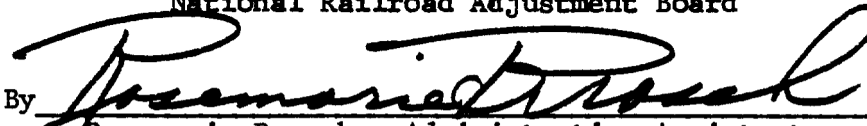
By the terms of the controlling Agreement the Board lacks jurisdiction, under the circumstances presented, to hear the claim on its merits. Consequently, the Board has no alternative but to dismiss the case.

A W A R D

Claim dismissed.

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 26th day of January 26, 1983.