

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

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

Dispute: Claim of Employees:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company did unjustly dismiss Carman L. C. Rogers from the service on March 16, 1979 as result of hearing held on February 28, 1979.
2. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to restore Carman L. C. Rogers to the service and make him whole for all rights and benefits that are a condition of employment such as, but not limited to, seniority, vacation, holidays, medical, dental, surgical, and all group life insurance benefits.
3. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to compensate Carman L. C. Rogers for all lost time from date of his dismissal until he is restored to service.
4. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to reimburse Carman L. C. Rogers for all losses sustained due to loss of coverage under health, medical, welfare, and life insurance benefits during such time as he is held out of service.
5. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to pay Carman L. C. Rogers interest at the 6% rate per annum for any and all payment he may receive as a result of this claim.

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 L. C. Rogers was notified by letter dated February 7, 1979 to appear at a hearing on February 28, 1979 with regard to charges that he violated General Rules A & D of the Milwaukee Road Safety rules governing employees of the Car Department.

Following the scheduled hearing, Claimant was notified by letter dated March 16, 1979 that his services with the Carrier were being terminated effective at the close of shift on that date. A letter of claim, instituted on behalf of Claimant and requesting that Claimant be restored to the service of the Carrier and be made whole, was delivered to Shop Superintendent J. V. Sands on March 21, 1979. The claim was declined by Sands by letter of April 3, 1979.

The Local Chairman advised Sands by letter dated April 9, 1979 that declination of the subject claim, as well as the reasons given therefor, was not acceptable and that there would be appeal of the claim through the Organization to the next highest Carrier Officer. However, no claim was filed on appeal until June 21, 1979.

By letter dated August 13, 1979, Assistant Vice President--Mechanical F. A. Upton declined the June 21, 1979 appeal, in part, on the ground that the claim had not been properly handled in accordance with the provisions of Article V of the August 21, 1954 Agreement, providing 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 of 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."

By letter dated August 21, 1979 the General Chairman advised Upton that appeal would be taken to the next highest Carrier Officer, which was done by letter of August 22, 1979 directed to Assistant Vice President, Labor Relations--Milwaukee Road V. W. Merritt. The latter declined the claim by letter dated October 12, 1979 for the reason that the appeal to the Assistant Vice President--Mechanical was not timely and for other reasons going to the merits of the dispute and the requested remedy.

When final conference to discuss the immediate claim failed to resolve the matter, the case was progressed to the Board where it remains the Carrier's position that in accordance with the provisions of Article V of the August 21, 1954 Agreement and Section 3, First (i) of the Railway Labor Act and/or Circular No. 1 of the Board the instant claim is barred and improperly before the Board.

The Railway Labor Act, Section 3, First (i), sets forth the requirements for handling disputes growing out of grievances. Only cases handled in the usual manner on the property may be referred to this Board.

Section 3, First (i) of the act reads:

"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate Division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

The Rules of Procedure of this Board, as set out in "Circular No. 1", contained the following:

"No petition shall be considered by any division of the Board unless the subject matter has been handled in accordance with the provisions of the Railway Labor Act, approved June 21, 1934."

In accordance with Section 1(b) of Article V of the August 21, 1954 Agreement the appeal presented to the Assistant Vice President--Mechanical must have been effected within 60 days from the date the Organization received notice from the Carrier Officer to whom the claim was presented in the first instance of disallowance of the claim. The record evidence is that the instant claim was not appealed within the prescribed time limits, without any extension of the 60-day time limitation. The matter concerning this procedural defect was thereafter raised at each level of appeal.

The Board has consistently ruled in numerous cases that when the record demonstrates that a claim has not been properly handled on the property in accordance with the provision of the controlling agreement, as required by Section 3, First (i), of the Act and Circular No. 1 of the Board, the Board lacks jurisdiction to hear the claim on its merits. Consequently, the Board has no alternative but to dismiss the case.

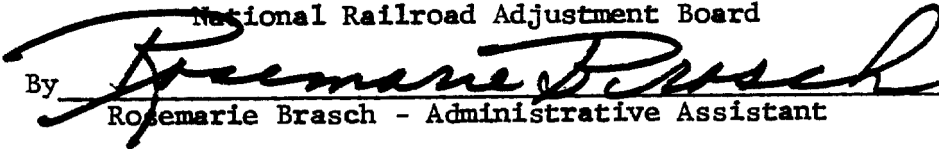
A W A R D

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, 1983.