

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

Parties to Dispute: { International Brotherhood of Firemen and Oilers
{ Indiana Harbor Belt Railroad Company

Dispute: Claim of Employees:

1. That under the current agreement, the Indiana Harbor Belt Railroad Company unjustly dismissed from service Laborer, Donald A. Ciucki from the date of September 25, 1980.
2. That, accordingly, the Indiana Harbor Belt Railroad Company be ordered to reinstate Laborer, Donald A. Ciucki, to his former position, compensate him for all time lost from September 25, 1980 until restored to service, with seniority unimpaired, made whole for all vacation rights, and reimbursement for all losses sustained account of coverage under health and welfare and life insurance agreements during the time he has been held out of service.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

That 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.

Donald A. Ciucki was a Laborer with Indiana Harbor Belt Railroad Company and had been in the service of the Carrier for two (2) years. The Carrier claims that the record in this matter is procedurally defective. The specific defect is that the Organization did not file the appeal within the time frame set forth in the controlling agreement - Rule 21(a) thereof. Under the controlling agreement, "an appeal for discipline must be made in writing by the employee or on his behalf by a duly accredited representative to the superintendent-labor relations within fifteen (15) calendar days after receipt of written notice of discipline...." The record indicates that the claimant's dismissal notice dated October 3, 1980 was returned "unclaimed". The General Chairman's appeal letter was not received by the Carrier until November 4, 1980. The record is quite clear that the first date of attempted delivery of the dismissal letter was October 6, 1980 and notice was provided to the employee regarding the existence of the certified letter. A second notice was provided to the employee by the post office on October 11, 1980. Finally, on October 12, 1980, the letter was returned to the Carrier. The appeal, as indicated was filed on November 4, 1980 which is almost double the time allowed.

Section 3, First (i) of the Railway Labor Act provides in pertinent part as follows:

"The disputes between an employee ... and a Carrier ... growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions, ... 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 to the appropriate division of the Adjustment Board ..." (Emphasis Added).

Failure to claim certified mail after notice by the post office is not excusable. The record is well documented that the post office made two (2) attempts to deliver the letter to the employee, but the employee failed to make himself available for receipt of the letter and refused to pick it up at the post office.

The defect in following Rule 21 was not waived by the Carrier. It was asserted in defense throughout each stage of the Appeal. Certified mail is proof positive that indeed the letter was in the chain of delivery and not accepted by the employee. The postal records speak for themselves and the employee's lack of diligence or concern results in a dismissal of the claim.


The claim would also be dismissed on the merits if the late timing of the appeal was not first addressed.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever
Executive Secretary

Dated at Chicago, Illinois, this 10th day of August, 1983.