

The Second Division consisted of the regular members and in addition Referee Steven Briggs when award was rendered.

Parties to Dispute: ( Johnnie F. Turpen  
( Missouri-Kansas-Texas Railroad Company

Dispute: Claim of Employees:

Turpen makes this claim for reinstatement and backpay based upon his discharge for absence from work on a portion of his shift on June 27, 1980, and for his failure to report to work on his shift on June 28, 1980. Turpen claims that good cause existed for his absence, that he informed his foreman at the earliest possible time prior to his absence, that no accommodation of his religious beliefs was attempted, and that the severity of the discipline imposed on him was not in conformity with the company rules or practices.

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.

On June 5, 1980, the Carrier commenced operation over a portion of former Rock Island trackage. On June 16, 1980, the Claimant performed initial services for the Carrier as a temporary former Rock Island employee under Article II, Section 9(a) of a March 4, 1980, Labor Protective Agreement between railroads involved in Midwest Rail Restructuring and employees of such railroads represented by the Rail Labor Organizations, quoted in part below:

Former Rock Island employees used by the Carrier in comingled service on a temporary basis in accordance with 9(a) Implementing Agreement, of the March 4, 1980, Agreement who do not secure jobs with the Carrier, will have their employment terminated without any preservation of rights or benefits with the Carrier.

On June 16, 1980, the Claimant began working for the Carrier as a temporary former Rock Island employee. He was assigned as Carman on the Tuesday through Saturday 3:00 p.m. to 11:00 p.m. shift. He did not work his shift on Saturday, June 22. On Monday, June 24, Master Mechanic B. Lawson verbally reprimanded the Claimant, who explained that due to his religious beliefs he could not work during the period between sundown Friday and sundown Saturday. Lawson told the Claimant he was expected to work his assigned shifts.

On June 25, 1980, the Claimant wrote Assistant Vice President-Mechanical M. F. Rister that he could not, with good conscience, work Friday sundown until Saturday sundown because of his religion. Rister responded by letter dated June 27 that the Claimant was to report to work on each day of his assignment.

On Friday, June 27, the Claimant left his assignment without authority at 8:40 p.m. He did not report for work on Saturday, June 28.

By letter dated June 29 from D. S. Kukull, Superintendent Cars and Locomotives, the Claimant was called for a formal investigation of his absences of June 27 and 28. He was charged with violation of Circular No. DP-2 dated November 23, 1973, reissued January 1, 1975.

General Rule A. Employees must report at the appointed time  
. . . must not absent themselves . . . without proper authority.

General Rule D. Employees must not be . . . (3) insubordinate.

After reviewing the investigation transcript, Superintendent Kukull notified the Claimant by letter dated July 7, 1980, that he was being dismissed from service.

Several good faith discussions of the matter subsequently took place between the Carrier and the Organization, but none resulted in settlement. Ultimately, the Organization notified the Claimant by letter dated January 30, 1981, from General Chairman H. A. Lamance that it would no longer handle his case. The letter stated in part:

You have the right to pursue your case to a conclusion with the Adjustment Board as an individual. In the event you desire to further handle this case on your own behalf, you must file with the . . . Board on or before August 3, 1981.

The Claimant secured the services of an attorney who, by letter of August 28, 1981, gave notice of his intent to pursue the matter before this Board. Thus, the Carrier asserts, the instant matter is not properly before the Board since it was not filed in a timely manner. The Board has carefully reviewed the applicable procedural requirements and concluded as a result that the record supports the Carrier's assertion.

Paragraph (d), Rule 27 (Grievances) of the Controlling Agreement states:

The requirements outlined in paragraphs (b) and (c), pertaining to appeal by the employee 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 nine (9) months from the date of said officer's decision proceedings are instituted by the employee 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 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 nine (9) months' period herein referred to. (emphasis supplied)

The "highest designated officer" of the Carrier here is H. M. Hacker, Director of Personnel and Labor Relations. His decision to deny the claim was issued in a November 14, 1980 letter to the Organization's General Chairman, H. A. Lamance. And again, Lamance notified the Claimant by his letter of January 30, 1981, that any appeal to this Board must be made by August 3, 1981.

The Claimant's August 28, 1981 appeal to this Board was untimely since it was initiated well after the contractually established nine (9) months from the decision of the Carrier's highest designated officer. There is nothing in the record to indicate that the parties mutually agreed to extend this time limit.

It is well established that a claim which has not been processed in accordance with the Agreement does not meet the requirements of the Railway Labor Act and this Board lacks jurisdiction to consider it (Second Division Awards 2285, 6853; Third Division Awards 21018, 24142). Accordingly, we must dismiss the claim.

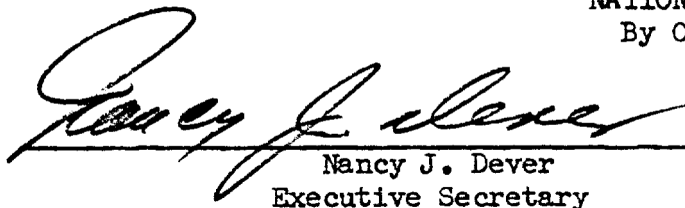
Having disposed of the matter on a procedural basis it is not necessary for the Board to consider the merits.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST:

  
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Nancy J. Dever  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of August, 1983.