



**Award No. 5936**

**Docket No. 5824**

**2-SOU-FO-'70**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION No. 21,**

**RAILWAY EMPLOYES' DEPARTMENT, A.F.L.-C.I.O.**

**(FIREMEN & OILERS)**

**SOUTHERN RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That under the current and controlling agreement, as amended, Laborer W. C. Kershaw was unjustly dismissed from service at Hayne Junction, Spartanburg, S. C. on May 14, 1968.
2. That accordingly, the Carrier be ordered to restore Laborer Kershaw to service with pay for resulting time lost with all other rights unimpaired, retroactive to May 21, 1968.

**EMPLOYEES' STATEMENT OF FACTS:** Laborer W. C. Kershaw, hereinafter referred to as the claimant, entered the service of the Southern Railway Company, hereinafter referred to as the carrier, as a laborer on January 16, 1944, continuing therein as such to May 14, 1968.

On May 14, 1968, the claimant became ill and reported off sick to his general foreman, J. D. Dunlap, and subsequently on May 10, 1968, placed himself under the care of Dr. J. C. Bull, Spartanburg, South Carolina.

In response to a call to his home on May 13, 1968, by General Foreman Dunlap, the claimant called back the following day, May 14, 1968, and appeared at his place of employment, and it can be assumed that he had some conversation with his roundhouse foreman, Mr. Rimer.

On May 21, 1968, the claimant reported for work, but was denied permission to resume his duties.

Subsequent attempts were made by the claimant to resume work without success, until he contacted his local representative under date of July 18, 1968, in an effort to determine why he was being held out of service.

The claimant's letter was then referred to the general chairman, who, in turn, wrote General Foreman J. D. Dunlap under date of July 28, 1968, reading in pertinent part as follows:

"We feel Laborer W. C. Kershaw has been rendered a grave injustice, and hereby request he be permitted to return to work immediately and paid

In Second Division Award 4560, without a referee, the board dismissed the claim there involved, holding:

"In order that this Board may assume jurisdiction of a dispute on petition, it must appear that the dispute has been handled in the usual manner in negotiations with the carrier as provided by the statute; and that it is only in case there has been a failure to reach an adjustment in the manner so provided that this Board will review such proceedings. In the instant case, there was no compliance with the statute on the part of petitioner. The usual manner of negotiating with the carrier was not complied with. There was no failure to reach an adjustment in the usual manner. Petitioner, having failed to pursue the required method of presenting his grievance, which in this case was that provided by the agreement between the carrier and the employees, this Board is without jurisdiction to pass upon petitioner's claim."

In conclusion, carrier directs attention to correspondence exchanged between the parties, in which it was pointed out to the general chairman that Mr. Kershaw had a bad record of absenteeism and had been dismissed on three prior occasions for, as here, failure to protect his assignment. In the prior instances that Mr. Kershaw was dismissed for failure to protect his assignment, he was restored to service on a leniency basis in each case. Thus, carrier has been extremely lenient in dealing with Mr. Kershaw over the years. Carrier's action in dismissing him in this instance was not unreasonable nor could it by any stretch of the imagination be considered as being arbitrary or unjust.

Mr. Kershaw was privileged under rule 25 to make a request for hearing as therein provided within 10 days after his dismissal. By his failure to request hearing within the time specified, he forfeited all rights and protection under the agreement. Claim which the brotherhood here attempts to assert in his behalf clearly has not been handled in the "usual manner" as required by the provisions of the effective agreement, the Railway Labor Act and the board's own rules of procedure.

The board should dismiss the claim presented and carrier respectfully requests that it do so.

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

The carrier or carriers and the employe or employees 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 were given due notice of hearing thereon.

Claimant contends that he was not given written notice of his discharge from Carrier's service as of May 14, 1968 until late in July of 1968 and therefore Carrier is estopped from relying on the time limits set forth in the discipline rule.

Rule 25—DISCIPLINE, the pertinent part thereof, provides:

"(a) Hearing. An employee discharged or otherwise disciplined will be given a hearing by the Master Mechanic or an officer designated by the Master Mechanic if written request is made to the Master Mechanic

by the discharged or disciplined employee, within ten (10) days after date of discharge or discipline. \* \* \* .”

The facts as gleaned from the record show that Claimant reported off sick on May 4, 1968 with an upset stomach. On May 13, 1968 Carrier's General Foreman telephoned to Claimant's home and was informed by Claimant's son that Claimant was in Washington, D. C.; that on May 14, 1968 Claimant called Carrier's Car Inspector, W. E. Baker and reported that he would be able to work that day, and on said date Claimant did report for work. Claimant introduced a letter from his doctor, J. C. Bull, M.D., stating that Claimant was seen in his office on May 10, 1968 and diagnosed his illness as "Spastic Constipation and proctitis" and was seen again on May 25, 1968 at which time Dr. Bull stated Claimant was able to resume work. Carrier's General Foreman, J. D. Dunlap, by letter to the Organization's General Chairman, Roy Abner, dated July 30, 1968, stated that he instructed Mr. Rimer, Roundhouse Foreman, to take Claimant out of service and charge him with failure to protect his assignment.

Claimant contends that Mr. Rimer never notified Claimant that he was Discharged. However, this contention is rebutted by the General Chairman Abner in his letter of August 18, 1968 to Master Mechanic P. T. Hoskins, when he stated:

"It is also our position that after Mr. Kershaw had been informed by Foreman Rimer that he was dismissed from service, he did not have to go see General Foreman Dunlap."

Thus, by the Organization's own admission it is seen that Claimant was notified by Foreman Rimer that he had been discharged. Further, Claimant contends that he was not notified in writing of his discharge and that therefore the 10 days' time limit didn't commence to run until July of 1968. However, Rule 25, or any other Rule of the Agreement, does not specifically require that Claimant be notified "in writing" of being discharged or otherwise disciplined, and therefore we find this contention to be without merit and must be denied.

Further, the Organization in paragraph (1) of the Statement of Claim admits that Claimant was dismissed from service on May 14, 1968, when it submitted said claim to this Board as follows: "1. That under the current and controlling agreement, as amended, Laborer W. C. Kershaw was unjustly dismissed from service at Hayne Junction, Spartanburg, S. C. on May 14, 1968."

Inasmuch as Claimant failed to adhere to the mandatory requirements of said Rule 25 by not making a written request for a hearing within 10 days from notice of dismissal on May 14, 1968, therefore we are compelled to dismiss this claim.

As was said in Award No. 5308:

"Time limit requirements agreed upon by the parties must be strictly enforced and we have no alternative under the circumstances of this case but to dismiss the claim. A contrary result could be reached only by doing violence to the plain language of paragraph (a) of the Agreement of May 15, 1956."

**A W A R D**

**Claim dismissed.**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division**

**ATTEST: E. A. Killeen  
Executive Secretary**

**Dated at Chicago, Illinois, this 20th day of May, 1970.**