

Award No. 6197
Docket No. 5994-I
2-SOU-I-'71

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

T. G. BUTLER, Petitioner (Carman)
SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF PETITIONER:

1. That under the current agreement, I, Carman T. G. Butler, Macon, Georgia, was improperly suspended from service March 17, 1965.

2. That accordingly the Carrier be ordered to restore me to service with all rights unimpaired including job rights, seniority rights, pass rights and vacation rights. Moreover, that the Carrier be ordered to compensate for my time lost from March 17, 1965 until returned to service and that my Hospitalization and life insurance be kept in full force and effect.

EMPLOYEE'S STATEMENT OF FACTS: I, Carman T. G. Butler, Claimant, employed by the Southern Railway Company, referred to as the Carrier, was suspended from service on March 17, 1965.

"Charged with being under the influence of some type of alcoholic beverage and not in your normal condition."

Formal investigation was held at 2 P.M. March 19, 1965. On March 27, 1965, I was notified that I was guilty as charged and dismissed from the service.

This dispute has been handled with the Carrier's officers designated to handle such matters, in compliance with the current agreement, all of whom have refused to make satisfactory settlement. The agreement effective March 1, 1926, as subsequently amended is controlling.

POSITION OF EMPLOYEE: It is submitted that I, the claimant was subject to the protection of the provisions of the aforesaid controlling agreement made in pursuance of the amended Railway Labor Act, particularly the terms of Rule 34, which reads in pertinent part:

Relations on August 30, 1966. Claim having been withdrawn, there is nothing for the Board to decide.

(2) Claim was not submitted to the Board within nine months from the date of final declination of the same by Carrier's Director of Labor Relations and is barred by the provisions of Section 1(c) of Article V of the August 21, 1954 Agreement.

Notwithstanding the position taken next above, Mr. Butler was proven guilty of the offense with which charged at a fair and impartial investigation. He was dismissed for just and sufficient cause. He had no contract right to be restored to Carrier's service, nor did he have any contract right to be paid for any time lost as a result of his dismissal. The Brotherhood's General Chairman so conceded and, in fact, withdrew the claim in Mr. Butler's behalf.

All evidence here submitted in support of Carrier's position is known to Mr. Butler.

Carrier not having seen Mr. Butler's submission reserves the right after doing so to present any other evidence necessary for the protection of its interests and make reply thereto.

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 were given due notice of hearing thereon.

The claim herein arose from Claimant's dismissal from Carrier's service on March 27, 1965. The record shows that Carrier's highest designated officer of appeals denied claim that Claimant be restored to service and paid for time lost on November 4, 1965. The claim was not submitted to the Second Division within nine months as required by Article V, Section 1(c) of the August 21, 1954, Agreement which provides that proceedings must be instituted before the appropriate Division of the National Railroad Adjustment Board within nine months from the date of the decision of the Carrier's highest designated officer. The claim is, therefore, barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 11th day of November, 1971.

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