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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6383
Docket No. 6226
2-BN-MA-'72

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

Parties to Dispute: (System Federation No. 7, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Machinists)
(Burlington Northern Inc.

Dispute: Claim of Employee:

1. That under the controlling agreement Machinist Helper G. Gutierrez was unjustly discharged from service on September 3, 1970, at the 14th St. Passenger Yards, Chicago, Illinois.
2. That accordingly the Burlington Northern, Inc. be ordered to compensate Machinist Helper G. Gutierrez for all time lost from September 3, 1970 until he is restored to service. This to include premiums for Hospitalization and Life Insurance. An additional amount is claimed for 6% interest per annum commencing on the date of this claim. Also that all rights such as seniority, vacation, sick leave, merger protected status, etc. be restored unimpaired.
3. That the Carrier be ordered to clear this charge from his personal record.

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.

Claimant was discharged on September 3, 1970, pursuant to an investigation held August 11, 1970, for alleged intoxication on the job. The discharge was effected by a letter from the District Master Mechanic dated September 3, 1970. On September 4, 1970 the Organization's Local Chairman wrote the District Master Mechanic as follows:

"Dear Sir:

I cannot accept your decision to dismiss Machinist Helper Guadalupe Gutierrez as of September 4, 1970. Your office held an investigation on Mr. Gutierrez on August 11 1970, which I was unable to attend, being on vacation & out of the city.

I am sure Mr. Gutierrez had adequate representation in the form of my assistant, Mr. Glenn Schieler, Vice Chairman of Local 746. However, after I returned from my vacation, I filed a leniency plea with you which you apparently chose to ignore, altogether.

Therefore I am obliged to inform you that this case will be referred to my General Chairman, Mr. G. R. DeHague, for final disposition."

On September 10, 1970, the District Master Mechanic wrote to the Local Chairman in response as follows:

"I am in receipt of letter from you dated September 4, 1970 in regards to the dismissal of Machinist Helper, Guadalupe Gutierrez.

Mr. Gutierrez was afforded an investigation, was represented by Mr. Glenn Schieler, in which he admitted violation of Burlington-Northern, Inc. General Rule G. You were furnished copy of the investigation, and inasmuch as verbal request for leniency cannot be accepted, and upon receipt of above-mentioned letter, this to advise that I am unable to change the status of Mr. Gutierrez's employment."

On September 23, 1970 the General Chairman wrote to the District Master Mechanic:

"The Machinist Shop Committee, at the 14th St. Passenger Yards, having complied with Rule 31 of the Current Agreement, so I am now presenting the following claim to your office for the re-instatement of discharged Machinist Helper, Guadalupe Gutierrez.

An investigation was held on August 11, 1970 on the charge that this employe had been in an intoxicated condition while working his shift July 25, 1970. This investigation developed that this helper had not been drinking on duty nor could anyone state that he had an odor of liquor on his breath. So the Carrier has discharged him on circumstantial evidence and under a unilaterally imposed Company rule that is not in the schedule governing the working status of this employe nor any other working under the System Federation No. 95 Agreement dated October 1, 1953 as subsequently amended.

We are therefore requesting the re-instatement of Mr. Gutierrez with all rights restored such as seniority, vacation, and to be paid all wages lost while dismissed which should include all Health and Welfare payments. An additional amount is claimed for 6% interest per annum commencing on the date of this claim.

I respectfully request that this claim be allowed."

On December 11, 1970, the General Chairman wrote to the District Master Mechanic:

"Referring to my letter of September 23, 1970 presenting claim for re-instatement of 14th St. Passenger Yard discharged Machinist Helper Guadalupe Gutierrez.

Rule 34(a) of the Current Agreement requires the Carrier to notify within 60 days if any claim is to be disallowed and "if not so notified the claim or grievance shall be allowed as presented." Your failure to notify in over 80 days now makes this claim payable and enforceable as presented.

I respectfully request that this be accomplished promptly."

On December 22, 1970 the District Master Mechanic responded:

"This has reference to your letter of December 11, 1970, regarding the case of discharged Machinist Helper Guadalupe Gutierrez.

In reviewing this case it will be noted that the appeal of Local Chairman Sanocki dated September 4, 1970 was declined in my letter to him of September 10, 1970, therefore, the case as presented in your letter of September 23, 1970 is not properly before me and should be referred to Labor Relations for disposition."

On January 2, 1971 the General Chairman wrote to the District Master Mechanic repeating his request for allowance of the claim and on the same date wrote to the Assistant Vice-President operations appealing the claim.

The Organization claims that the Carrier violated Rule 34(a) while the Carrier alleges the Claimant violated Rule 34(b), both contending that the case should not be considered on its merits. The pertinent portions of Rule 34 are as follows:

"Rule 34, Claims or Grievances

(a) All claims or grievances must be presented in writing by or on behalf of the employees involved, to the officer of the Carrier authorized to receive same, within sixty (60) days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance, If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.

(b) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within sixty (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 sixty (60) day period of either a decision or appeal, up to and including the highest officer of the Carrier designated for that purpose....

(g) This rule shall not apply to requests for leniency."

The parties to the agreement contemplated a leniency procedure in discipline cases; this is clearly evident in Rule 34(g). We find that the letters dated September 4th and 10th quoted above constituted correspondence dealing with the dismissal of the Claimant, apparently relating to an appeal for leniency. We do not believe that these letters can properly be interpreted to constitute a claim or grievance; or disallowance of a claim, under the provisions of Rule 34(a). The Local Chairman's statement "Therefore I am obliged to inform you that this case will be referred to my General Chairman Mr. G. R. DeHague, for final disposition" cannot be construed to constitute a claim or grievance.

On September 23, 1970 the General Chairman wrote to the District Master Mechanic (see letter quoted supra) and we find that this letter constituted the claim under Rule 34(a). There was no reply from the Carrier disallowing the claim within the sixty day period following its receipt, as required by the Rule. Time limit rules in collective bargaining agreements are as significant as any other rules; they must be interpreted literally and followed exactly by both parties. This Board has held on many occasions that failure to abide by such time limit rules is sufficient reason for either rejecting or affirming claims without reaching the merits. (See Awards 2268 and 5693 for example). For the reasons indicated above, we therefore sustain the claim.

Claimant, in addition to reinstatement with back pay and all seniority rights, requests premiums for Hospitalization and Life Insurance, as well as 6% interest from the date of the claim.

In Third Division Award 15709 we held: "We cannot award claimant that which is not provided for by the express terms of the agreement". The parties to the Agreement have had regular opportunities to amend or change the rules; this Board may not by its awards replace the collective bargaining process. We find nothing in the rules providing for interest or insurance premium payments; these remedies cannot be allowed within the limits of our authority (See Awards 5467, 5672, 5819 and many others), We find that the Claimant shall be reinstated in accordance with the provisions of Rule 35(g).

A W A R D

Claim sustained; Claimant shall be reinstated under Rule 35(g) in accordance with the Findings above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 27th day of October, 1972.