

The Second Division consisted of the regular members and in addition Referee John Phillip Linn when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company did unjustly dismiss Carman William A. Flakes from the service of the railroad on March 6, 1979 as a result of a hearing held on December 8, 1978.
2. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to restore Carman William A. Flakes to the service of the railroad and that he be made whole for all rights and benefits that are a condition of employment, such as, but not limited to, seniority, vacation, holidays, medical, surgical, dental and all group life insurance benefits.
3. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to compensate Carman William A. Flakes for all lost time as a result of his unjust dismissal from service.
4. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to reimburse Carman William A. Flakes for all losses sustained due to loss of coverage under health, medical, welfare and life insurance benefits during such time as he is held out of service.
5. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to award Carman William A. Flakes interest at the 6% rate per annum for any and all payment he may receive as a result of this claim.

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 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 waived right of appearance at hearing thereon.

Claimant William A. Flakes was notified by letter dated December 7, 1978 that he was to appear for a hearing on December 8, 1979 involving charges of excessive absenteeism and violation of Rule 23. After the hearing on December 8, 1978, Claimant was notified by letter dated March 6, 1979 that his services with the Carrier were being terminated effective that same date.

By letter dated March 19, 1979, a claim was instituted on behalf of Claimant requesting that the Carrier restore Claimant to its service with a make-whole remedy. The claim was declined by Shop Superintendent J. V. Sands by letter dated April 3, 1979.

The Local Chairman advised Sands by letter dated April 9, 1979 that declination of the claim and reasons therefor were not acceptable and that the claim would be appealed through the Organization to next highest Carrier Officer designated to receive the appeal. However, the next appeal step was not effectuated by the General Chairman until his appeal letter of June 27, 1979 was delivered to Assistant Vice President-- Mechanical F. A. Upton.

By letter dated August 13, 1979, Mr. Upton declined the claim, in part, on the ground that the claim had not been properly handled in accordance with the provisions of Article V of the August 21, 1954 Agreement, and was barred under the terms of that Agreement because the claim was not appealed within 60 days from the date the claim was declined by Mr. Sands.

Subsequently, the claim was processed to the next highest Carrier Officer designated to receive it, Assistant Vice President, Labor Relations--Milwaukee Road V. W. Merritt, who also denied the claim, in part, on the ground that it was untimely and barred. After a final conference in the matter, the claim was processed to this Board.

It is the Carrier's position that in accordance with the provisions of Article V of the August 21, 1954 Agreement and Section 3, First (i) of the Railway Labor Act and/or Circular No. 1 of the Board the instant claim is barred and improperly before the Board.

The Railway Labor Act, Section 3, First (i), sets forth the requirements for handling disputes growing out of grievances. Only cases handled in the usual manner on the property may be referred to this Board.

Section 3, First (i) of the act reads:

"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of his Act, 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 by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

The Rules of Procedure of this Board, as set out in "Circular No. 1", contain the following:

"No petition shall be considered by any division of the Board unless the subject matter has been handled in accordance with the provisions of the Railway Labor Act, approved June 21, 1934."

In accordance with Section 1(b) of Article V of the August 21, 1954 Agreement the appeal presented to the Assistant Vice President--Mechanical Must have been effected within 60 days from the date the Organization received notice from the Carrier Officer to whom the claim was presented in the first instance of disallowance of the claim. The record evidence is that the instant claim was not appealed within the prescribed time limits, without any extension of the 60-day time limitation. The matter concerning this procedural defect was thereafter raised at each level of appeal.

The Board has consistently ruled in numerous cases that when the record demonstrates that a claim has not been properly handled on the property in accordance with the provision of the controlling agreement, as required by Section 3, First (i), of the Act and Circular No. 1 of the Board, the Board lacks jurisdiction to hear the claim on its merits. Consequently, the Board has no alternative but to dismiss the case.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of January, 1983.