

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

PARTIES TO DISPUTE: (R. A. Cook
(Chesapeake and Ohio Railway Company

DISPUTE: CLAIM OF EMPLOYEES:

The Chesapeake and Ohio Railway Shop Crafts Agreement Rules, dated July 1, 1921 (as amended) are controlling.

This claim is based on the contention that Management has unilaterally changed the working conditions at the Huntington Shops (in Huntington, W.Va.).

Management took it upon it's own, non-contracturally, and in violation of basic human rights, to instruct employees that a certain other employee could not be associated with.

As a remedy, I request that this practice on the part of Management be terminated and that monetary damages as requested in my grievance (dated May 19, 1981 and marked Exhibit A) be awarded.

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.

In late 1978 and early 1979, two of the Claimant's fellow employes were dismissed from service for various forms of misconduct. The first, Machinist Ashley Leach, was incarcerated as a result of his misconduct; the second Machinist Paul Rice, was reinstated to service on a leniency basis.

In a May 19, 1980, letter, the Claimant in the instant case filed a grievance alleging that Rice was a friend of his and that:

"People are known by the friends they keep. Paul (Rice) has been granted as a bad worker. This tars me with the same brush. I am being punished, albeit indirectly..."

As a remedy, the Claimant seeks the following:

"Now for the price tag. I will completely forgive the embarrassment and suffering you have caused me and pursue the certain matter no further if you do the following things as payment to me, for my grievance:

- (a) Restore Paul Rice to his former HONORABLE PUBLIC STATUS as a Journeyman Machinist,
- (b) Pay Paul Rice back the money he lost while he was fired,
- (c) Pay Paul Rice a reasonable sum of money for the humiliation, degradation, pressure, harrassment, threats, accusations, lies, unjust treatment, etc. that the railroad has heaped upon him, and
- (d) Do all three of the above (a), (b), and (c), for Mr. Ashby Leach. He was railroaded, too. Quickly, while WE can keep it in the FAMILY. Before he hears of what is going on here and takes it public."

The Carrier denied the grievance, asserting that the Rice and Leach cases were handled to a conclusion under Agreements with the duly authorized International Association of Machinists representatives, and that the Claimant had no standing to submit claims in his own behalf for discipline assessed to other employes or to resubmit claims on their behalf. The Claimant appealed the grievance to T. N. Keller, Manager Labor Relations, who on September 19, 1980, denied the appeal. The Claimant requested a conference with Keller by letter of September 25, 1980. The conference was scheduled twice, and both times the Claimant did not attend. In a letter dated June 26, 1981, nine months and 6 days after Carrier's final denial of appeal, the Claimant submitted his grievance to this Board for adjustment.

The Carrier's position may be summarized as follows:

- (1) The grievance was not timely filed before this Board and thus is barred from consideration.
- (2) The grievance has not been discussed in conference on the property and thus is barred from consideration.
- (3) The Claimant has no standing to either submit or resubmit claims on behalf of Ashby Leach and Paul Rice.
- (4) The Claimant has no standing to submit claims in his own behalf for discipline assessed to other employes and is not entitled to the remedies sought.

The Claimant maintains that the Carrier unilaterally changed conditions at his work location (the Huntington Shops, Huntington, West Virginia) by instructing employes that certain other employes "could not be associated with."

The Board has carefully studied the parties' respective arguments and concluded that we have no jurisdiction in this matter. Rule 35 of the applicable Shop Crafts' Agreement requires that all appeals from the decision of the Carrier's highest designated officer must be filed within 9 months of said decision. It is quoted in part below:

"All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employe or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group of regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act."

The Carrier's Labor Relations Manager Keller is its highest designated officer. His final decision was issued via a September 19, 1980, letter. The 9-month time limit for appealing that decision expires June 20, 1981, and the Claimant's appeal to this Board was dated June 26, 1981. Thus, the appeal was untimely. In identical situations over the years, the Board has refused jurisdiction and consistently dismissed claims (see, for example, Second Division Award Nos. 6197 and 5250).

Our study of the record indicates that the above is not the only procedural defect of this claim. And we have concluded that the merits of the case support the Carrier's position as well. But again, based upon the preceding paragraph, we have no jurisdiction in this matter and detailed discussion of its merits would serve no purpose.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Defer - Executive Secretary

Dated at Chicago, Illinois, this 12th day of October, 1983.