

The Second Division consisted of the regular members and in addition Referee W. J. Peck when award was rendered.

Parties to Dispute: (Charles F. Bradney,
(Maryland and Pennsylvania Railroad Company

Dispute: Claim of Employees:

Wrongful Discharge.

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 employes 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 is an electrician employed by the Maryland and Pennsylvania Railroad Company. Claimant appears to have been in a furlough status at the time of the incident which triggered this dispute.

On date of November 12, 1981, a letter signed by Messrs. Albert M. E. Richards and John Morthland describing themselves respectively as Union Steward and Treasure (sic) was directed to and received by Carrier's Personnel Administrator, Melody Gotwalt. The letter reads as follows:

"The last Union meeting (Sept.) we had; it was brought to my attention that Mr. Bradney was late with dues for months of March and April.

In accordance to the rules set by the Union in May, 81, you have 30 days to pay back dues. Mr. Bradney failed to do so, until about the middle of Sept. so therefore we do not reconize (sic) Mr. Bradney as a good standing member."

Later information reveals that the alleged late payment was for the amount of one dollar.

On date of November 18, 1981 Carrier's Personnel Administrator wrote the Claimant as follows:

"Per the attached notice from your Union you are no longer considered an employee of the Maryland and Pennsylvania Railroad, effective November 12, 1981. If you question this, please contact your Union Steward."

On date of November 27, 1981 Claimant sent a protest and request for an investigation to Carrier's General Manager, Mr. J. D. Kotishck; the letter was also signed by the Union Secretary.

On date of December 14, 1981, Carrier's General Manager answered Claimant, denying Claimant's request for an investigation stating that Carrier had executed its obligation under the contract and that they had "closed its records in this case".

Insofar as the record shows there does not appear to have been any further correspondence between the parties on the case until it was presented to this Board.

At the outset, this Board must make a determination as to whether this claim has been handled in the usual and customary manner and in accord with the provisions of the agreement and the Railway Labor Act. Paragraph 10.0 of said agreement reads:

"10.0 A grievance shall be defined as any dispute concerning wages, hours, or working conditions which arises between the company and an employee or between the company and the union. A grievance as to defined (sic) shall be taken up in the following procedure.

Step 1: Between the aggrieved employee (with the aid of his Committeeman if he so desires) and his immediate Supervisor.

Step 2: Between the Committee Chairman and the Supervisor. All grievances shall be reduced to writing at this step.

Step 3: Between the Committee and the General Manager.

Step 4: In the event the grievance has not been settled in Step #3, either party may submit the matter to Arbitration under the Railway Labor Act."

Step 1 of the above cited line of appeal clearly can be orally handled, and had Claimant in his submission stated that it had been so handled, and also had Claimant or his representative complied with the provisions of Steps 2 and 3 we would have also recognized that Step 1 had been complied with, however Claimant's representative makes no such contention in his submission, and since Steps 2 and 3 must be in writing and do not show up either in the Claimant's or the Carrier's submission our findings must be that only Step 4 has been handled in the normal and customary manner and in accord with the agreement between the parties.

Section 2, Second of the Railway Labor Act reads in part:

"Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute." (Emphasis added.)

and Sixth:

"Sixth. ...in case of a dispute...it shall be the duty of the designated representatives...to confer in respect to such dispute." (Emphasis Added.)

The above cited provisions of the Railway Labor Act leave no room for argument, they refer to "all disputes...considered and ...decided...in conference"-and: "it shall be the duty...to confer...."

This Board has also ruled on countless occasions that if no conference has been held between the employees or the employees' representative and the proper carrier official that the above cited provision of the Railway Labor Act is decisive and that the claim is improperly before the Board.

Since this claim clearly has not been handled in accord with the Railway Labor Act, we have no choice but to rule that it is improperly before this Board and must be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 18th day of April, 1984