

The Second Division consisted of the regular members and in addition Referee T. Page Sharp when award was rendered.

Parties to Dispute: (Reynold O. Gordon
(
(National Railroad Passenger Corporation (Amtrak)

Dispute: Claim of Employees:

Petitioner has not violated Rule I of the N.R.P.C. Rules of Conduct Specification on May 20, 1981 at approximately 7:30 a.m. The Petitioner was not insubordinate because he was not told to come down from the roof of M.V. 857 by a foreman, Max Mattes (See Petitioner's Exhibit #1.)

Petitioner has not violated Rule F of the N.R.P.C. Rules of Conduct on May 20, 1981 at approximately 7:30 a.m. Petitioner was advised to come down off the roof of M.V. 857 by Mr. Kanicki which petitioner did immediately. (See exhibit of Petitioner 1) Petitioner has not violated Rule 1001 of the AMTRAK System Safety Program. (See Petitioner's Exhibit #1)

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 were given due notice of hearing thereon.

Claimant, R. O. Gordon, was a Pipefitter in Carrier's Wilmington, Delaware facility on May 20, 1981, when his conduct on that date led to an investigation which led to his termination. Following the investigation the appeals permitted under the Agreement were followed in a timely manner. On November 27, 1981, J. Walter Hammers, Jr., Corporate Director Labor Relations, wrote a denial letter to the General Chairman of the Sheet Metal Workers International Association.

No more was heard from the case until November 10, 1983, when the Carrier received a letter from the National Railroad Adjustment Board which stated in pertinent part:

"We have received a written notice dated November 3, 1983, from Mr. Oscar N. Gaskins, Oscar N. Gaskins & Assoc., P.C., Suite 1310, Robinson Bldg. 42 S. 15th Street, Philadelphia, Pa. 19102 of his intention to file an ex parte submission with the Second Division of the National Railroad Adjustment Board, thirty days from the date of his letter in connection with dispute between the Carrier and Mr. Reynolds Gordan (sic), A Sheet Metal Worker."

The case was docketed before the National Railroad Adjustment Board and oral arguments were heard in Chicago, Illinois on March 13, 1985. At the oral argument and in its brief before the Adjustment Board the Carrier raises the defense that the time limits dictated by the Collective Bargaining Agreement had long expired. Rule 23 (e) of the Agreement states:

"(e) Any appeal to the Director of Labor Relations must be made by the employees or their duly-accredited representative within 30 calendar days of the date of such decision. A conference on the appeal shall be held between the Director of Labor Relations and the employees or their designated representative of the Organization within 30 calendar days of the date of the appeal. A decision on the appeal shall be rendered within 30 days of the date of conference. Any appeal from the decision of the Director of Labor Relations must be made to a proper tribunal as established under the provisions of the Railway Labor Act within 9 months of the date of such decision."

As stated, the proper steps were followed until the Director of Labor Relations issued his denial letter. Until this time the representative of the Claimant had handled his investigation and subsequent appeals. Obviously he desired to pursue this matter apart from his representative as is his right. He appealed the denial to a proper tribunal under the Railway Labor Act, the Second Division of the National Railroad Adjustment Board. However, his appeal came some twenty four months after the date of the denial letter.

Rule 23 is specific in its mandates. It states that any appeal from the Director of Labor Relations must be made within nine months from the date of decision. The parties have bargained specific time limits into the Collective Bargaining Agreement which are binding on all parties to that Agreement. Claimant is a party bound by that Agreement.

The Board by the provisions of the Railway Labor Act is mandated to address itself to matters only within its jurisdiction. The Agreement is specific in its mandatory time limits. For the Board to go outside of the provisions of the Agreement would be an action in excess of its jurisdiction. This it will not do.

The Claimant has filed his appeal to this Board outside the time frame permitted under the terms of the Agreement, therefore, the claim was untimely filed.

Form 1
Page 3

Award No. 10405
Docket No. 10463-I
2-NRPC-I-'85

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of May 1985.