Award No. 2765

Docket No. SG-2760

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE GULF, MOBILE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: That Mr. W. B. Reeder was unjustly removed from the service subsequent to a hearing held at Mobile, Ala., November 4, 1943, for the purpose of investigating his failure to carry out instructions in accordance with a message from Mr. K. P. Goodwin, Supt. Tel. Telg., & Signals, under date of October 26, 1943. That he be restored to service with seniority rights unimpaired and paid at proper rate of pay for all time lost since November 11, 1943.

OPINION OF BOARD: The events leading up to the submission of this controversy may be gleaned from the statements of the respective parties.

We are first confronted with a jurisdictional question which must be disposed of before other matters involved become entitled to our consideration.

The Carrier contends the preliminary action necessary to confer jurisdiction was not taken by the employe involved while the Brotherhood insists that position is so technical it should be disregarded and the dispute determined on its merits.

At the outset, it must be conceded the jurisdiction of this tribunal is subject to the regulation of Congress and that unless a party brings himself within the requirements of the Act prescribing the time and manner of submitting a cause to it, he is not entitled to a review of the factual situation which is the basis of the controversy. In one sense this universal rule is a harsh one but in another, since it affects all parties alike it is just, because it is only by its application that there can be orderly and effective administration of the affairs of judicial and quasi judicial bodies and a prompt and certain disposition of the rights of those who are permitted to submit their cause to such tribunals for final determination.

Summarizing, it should be stated that in this case a dispute arose where for our purpose it will be conceded it was uncertain as to who had authority to grant a leave of absence. It was also conceded a leave of absence was granted W. B. Reeder, who held a regular position as a signal helper, by his immediate superior, a signal maintainer. The employer took the position the grantor of the leave had no authority to take that action and instructed the employe to report for duty immediately, unless sick or otherwise unable to work. The latter did not return to work but elected to rely upon a provision of the current contract (3-K) which he claimed permitted the leave. Immaterial for our present purpose is the question of the force and effect of the provision or the additional question of the sufficiency of the reason given for failure to return to duty, which, it may be noted the record discloses was

either a belief a proper leave had been granted or that incompleted personal business justified non-conformance with the order. Perhaps it was both. In any event Reeder was cited to appear at a hearing, the purpose of which was to investigate his failure to carry out instructions. He did appear and the hearing was had on November 4, 1943. On November 9 following, by letter bearing that date and which was delivered to him personally at 7:20 A. M., on the morning of November 11, he was notified he had been relieved from the Carrier's service. We must, therefore, assume, if in fact it is not admitted by the record, the date of the decision was that appearing on the letter, namely, November 9, 1943. So, also, we are obliged to assume that failure to comply with an employer's instructions with respect to the work in which the employe is engaged is a ground for dismissal from service, at least, until such time as it has been determined in a tribunal vested with power to determine that question the instruction which eventually gave rise to the order of dismissal was not warranted by the terms of the current agreement between the parties.

It can also be stated from the undisputed record that it was not until November 25, 1943, more than 15 days after the date of the decision that an attempt was made to appeal from it to the official contemplated by the terms of the agreement, see Rule 9 (c). True, as is urged, on November 12, Reeder wrote a representative of the Brotherhood regarding an appeal but, conceding knowledge of that action came at sometime to the Carrier, such fact in no sense can be construed as a compliance with the requirements of the section of the agreement to which we have just referred.

Faced with the facts as we have related them what must be our decision on the jurisdictional issue?

Section 3 (i) of the Railway Labor Act provides that disputes shall be handled in the usual manner up to and including the chief operating officer of the Carrier designed to handle disputes but that failing to reach an adjustment in such manner they may be referred by petition of the parties to the appropriate division of this Board. We construe the language there found to mean that the usual manner of handling a dispute is that provided for by the terms of the current contract.

Rule 9 (c) of the present contract reads:

> "Investigation will be held within 10 days from the date on which an employe is advised of the charge or charges made against him, or from the date on which his written request for a hearing is received. Decision will be rendered within 10 days after completion of hearing. If the employe is not satisfied with decision, he will have the right of appeal, in succession, up to and including the highest official on the railroad designated to handle disputes."

With respect to right of appeal, Rule 9 (d) provides:

> "The right of appeal must be exercised within 15 days of the date of decision appealed from, and decision shall be made as promptly as possible. Copy of notice of appeal must be furnished the officer whose decision is appealed."

Our jurisdiction springs from the section of the Labor Act to which we have referred and can only be exercised if within the four corners of the current agreement authority to accept it can be found.

The language used in the quoted sections of the contract is not ambiguous. Under such circumstances, it is elementary we must give the words there found their usual and customary meaning without resort to strained construction or interpretation resulting in what we might deem more desirable under the exigencies of the factual situation with which we are confronted. The current contract gave the employe the right to appeal, "in succession, up to

and including the highest official." It expressly required Reeder to exercise that right within "**15 days of the date of decision** appealed from." (Emphasis supplied.) He did not do so. Instead, he waited until time for appeal had expired before exercising his right. This was too late. By his own action he created a situation, breaking a required link in the chain of procedure provided for by the Agreement which, we are compelled to hold, precludes us from assuming jurisdiction. We cannot reach out and read into the contract something that is not there, nor can we arbitrarily enlarge the time for exercising an appeal, which, in either event, we would be doing, if as suggested, we construe its language to mean that an appeal is perfected if the right is exercised within 15 days of the date notice of the decision is served upon the employe.

In reaching the conclusion just announced we are not unmindful of the contention, strenuously urged, that it opens the door for the holding up of decisions under circumstances where it might unjustly deprive a party of his right to appeal. In passing, we note that it is not the case here for the notice was served promptly and Reeder had ample time in which to exercise his right if he had seen fit to do so. The argument is not without merit and if we were a party and here engaged in the making of a new contract is one which would be entitled to much weight.

The advantages of a contract which requires the service of an order before the period of time given for the taking of an appeal commences to run are readily perceived. However, the making of contracts is not without our province. It is our duty to construe them as written. This one, under all recognized rules of contractual construction, is susceptible of no other interpretation than the one we have given it.

Since we have no jurisdiction, it follows the case must be dismissed without further reference to the merits of the controversy.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has no jurisdiction over the dispute involved herein; and

That the case should be dismissed.

AWARD

Case dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of January, 1945.