

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

(James M. Douglas, Referee)

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Chef Slocum Taylor, and Waiters Hunter Garrett and Joshus Dominick, to have their records cleared of the discipline imposed upon them by suspension of 66 days, and for compensation to the extent suffered as a result of Management's refusal to afford them a hearing as provided under Regulation No. 7-A-1 of the Agreement.

OPINION OF BOARD: The question for decision is whether an employee must personally initiate his original appeal to his Superintendent under Rule 7-A-1 or whether such an appeal may be initiated by his representative acting for him.

Rule 7-A-1 provides:

"An employee who considers that an injustice has been done him, and who has appealed his case in writing to his Superintendent within ten (10) days, will be given a hearing promptly at which he may be accompanied by an employee from the district in which he is employed to assist him in presenting his case. After his appeal has been acted upon by the Superintendent, he may, if he so desires, be represented before the Superintendent and General Superintendent by the Committee representing employees covered by these Regulations."

The cases involved in this claim were appealed in writing within the proper time, the notice of appeal in each case signed by the local chairman acting in behalf of each employee. Carrier denied the appeals on the ground the above rule requires that the written notice of appeal must be signed by the employee himself. We do not agree with Carrier's interpretation of the rule.

There is nothing in the rule that expressly requires the appeal to be taken by the direct action of the employee personally. Such a meaning cannot be given to the words "An employee . . . who has appealed his case in writing . . ."

The verb to appeal simply means to transfer the proceedings to a higher authority, to initiate proceedings for review. Its meaning does not contemplate that taking such a step must be performed only by the appellant himself. By long usage it includes as well the action to secure an appeal taken by the appellant's agent or representative. It is well understood that the verb includes both situations namely, an appeal taken by the appellant and one taken in his behalf. Therefore, the fact that appeals under this rule had been heretofore taken by the employees personally cannot be regarded as an interpretation that the rule prohibits the taking of an appeal by a representative acting for an employee.

Other awards have held that similar procedural steps are not limited in their performance only to the individual concerned but may be taken in his behalf by his representative. See Awards 137, 547 and 2240.

The question now arises whether we should order the cases involved in this claim remanded for hearing on appeal. The effect of Carrier's action denying the appeals and thereby making the punishment imposed by it a final matter as far as it is concerned is in effect the same as imposing punishment without granting a hearing. Under the rules an appeal is an integral part of the hearing. Where punishment has been imposed without granting a hearing it has been the uniform practice of this Division to set it aside. It is incumbent upon us to follow that practice in this case. The claim should be sustained.

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

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

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of June, 1945.