

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert G. Simmons, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: 1. That the Carrier violated Rule 22 of Agreement in effect when on August 17, 1945, it dismissed Section Laborer Abe Brown from the service without first according him a hearing.

2. That Abe Brown shall be reinstated into the service with seniority rights unimpaired and paid for time lost.

OPINION OF BOARD: On August 17, 1945, a difficulty developed between employe Abe Brown and Supervisor Cannon, which resulted in Brown being sent off the job. The Organization contends that what happened was a dismissal from the service in violation of Rule 22(a). The Carrier contends that he was suspended under that rule.

On August 24, 1945, Mr. Brown claimed his pay and terminated his service voluntarily. No other construction can be placed on the events of that day. The statements furnished by the Carrier stand unchallenged by the Organization. Mr. Brown furnishes no statement to the contrary.

The Organization contends that what happened on the 24th of August is immaterial, and that Rule 22(a) had been violated on the 17th of August. The Carrier contends that by the act of Mr. Brown on August 24th, his rights under the rule were terminated.

Both parties agree that under that rule the Carrier had no right to discharge Mr. Brown without the hearing that the rule requires. An attempt to discharge or an actual discharge would have been in violation of the rule. Without question Mr. Brown on August 24, 1945, had the right to a hearing to determine whether or not he could be dismissed for his actions on August 17, 1945. Without question the Carrier on August 24, 1945, had the right under the rule to prefer charges in writing against Mr. Brown. On that day, without demanding a hearing, Mr. Brown quit the service, as he had an unquestioned right to do under Rule 20.

Rule 22(a) is a rule designed for the protection and benefit of the employee. The benefits of the rule may be waived. We are of the opinion that Mr. Brown on August 24, 1945, having voluntarily terminated his service with the Carrier, thereby waived his rights as an employee to the benefits of Rule 22(a).

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 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 for the reasons stated in the Opinion, the claim is denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of March, 1947.