Award No. 6446
Docket No. DC-6483

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Emmett Ferguson, Referee

PARTIES TO DISPUTE:

UNITED TRANSPORT SERVICE EMPLOYES

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: This claim is filed on behalf of Samuel L. McLurkin, Sr., Chef Cook, Dining Car and Commissary Department of the Baltimore and Ohio Railroad, against whose record a reprimand was assessed on a charge of having served a meal to a Stewardess on May 10, 1952, Car 1082, Train 26 without obtaining an a-la-carte check to cover such meal. The Organization claims that the charge was not proved at the hearing, and hence the imposition of discipline was unfair, arbitrary and an abuse of Carrier's discretion. Article 13 of the effective rules agreement was violated by the Carrier.

Claim is made 1) for Mr. McLurkin's record to be cleared of this reprimand, and (2) that he be reimbursed at his applicable rate of pay for all time lost as a result of Carrier's action.

OPINION OF BOARD: The facts of this discipline case are relatively simple, the transcript is brief and there is no dispute as to time. June 3, 1952, the Claimant McLurkin was ordered by the Manager of the Dining Car Department to present himself June 10, 1952 for investigation on a charge that on May 10, 1952, he had violated a rule in serving a stewardess a sandwich and cup of coffee without an a-la-carte check. The brief hearing June 10, 1952, conducted by Chief Clerk J. H. Wickham, Jr., disclosed that Claimant was 55 years old, occupation cook and was in service 25 years; that he was properly notified and desired no witnesses, that he was in charge of the kitchen that day, and that he had read Circular #388 and its supplement. On the ultimate question of fault there is an implication that the Stewardess might have been served but that the cook in serving it might not have known but what it was for the crew.

The next step in the case was taken in a conference held June 24 in the office of Mr. H. O. McAbee over whose signature the original investigation was ordered. Following the conference, McAbee wrote the Claimant that same day, as shown by Exhibit "D", advising that McLurkin was being returned to duty and warning him against a repetition of the occurrence. This conference appears to have been the conclusion of the investigation. There is no proof or denial in the docket concerning the details of the conference except this letter. One thing is certainly evident, McLurkin must have been out of service at that time, but we do not know how soon after the notice of June 3rd he stopped his assignment nor how soon after June 24 he returned to service.

The important thing is that a decision was reached on June 24 and the 30-day limit for appeals established by Rule 13 (c) began to run then. The

next step in the procedure was taken by the Organization on July 11, when an appeal was made to Mr. R. L. Harvey, Manager Labor Relations, which was well within the first time limit. Therefore on July 11, the next 30-day period fixed by the rule, within which the conference on appeal should have been arranged, began to run.

Instead of granting the requested appeal, or replying to the request, no action was taken until August 16th, (more than 30 days later) at which time the Carrier declined the Organization's request and affirmed the Carrier's previous position.

From all these facts we conclude that the Claimant has not been given his contractual right of appeal and that the Agreement has been violated by the Carrier.

Express time limitations in grievance procedure have been many times held to be enforceable; primarily because the parties by including them in their agreements intended thereby to expedite the orderly handling of claims. Application of such rules is sometimes harsh but in the interests of efficient, proper procedure they must be applied. We are not granted any discretion to extend such statutes of limitation as the parties have fixed on themselves. We can only apply their own rules. It follows that in so doing we are precluded from judging the merits of the basic dispute. The rule having been violated the claim must be sustained.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 jurisdiction over the dispute involved herein; and

That the rules have been violated.

AWARD

Claim (1) and (2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 15th day of January, 1954.