Award No. 6864
Docket No. DC-6838

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Ex parte submission of the Brotherhood of Railroad Trainmen in—

> Request of Dining Car Steward E. P. Leroy, Southern District, for reinstatement with seniority unimpaired and claim for compensation for all time lost as a result of his dismissal from the service, September 18, 1952, for alleged violation of Rules B and 801 of General Rules and Regulations of the Dining Car Department dated November 1st, 1951 and Rule 12(a), Rule 12(e), and Rule 12-A(a) of Rules and Regulations Governing Service of Dining Car, Coffee Shop Car and Cafe Car Stewards, effective January 1, 1952, dining car 10149, Train No. 40 from Los Angeles July 17, 1952, en route to El Paso.

OPINION OF BOARD: This is a discipline case wherein the Claimant, a Dining Car Steward, was dismissed from service, after a formal investigation, on charges of irregularities in connection with the handing of meal checks, in violation of rules of the agreement mentioned in the claim.

At the outset we are confronted with a contention Claimant failed to prosecute his claim on the property in accord with procedural rules of the existing agreement. Specifically Carrier's position is that Claimant failed to give written notice of appeal on the property as required by the agreement, hence the claim should be denied. If the facts sustain this position it must be upheld. See, e.g., Award No. 3274. We therefore turn to the record which, when carefully reviewed, discloses the following factual picture, about which there can be no dispute.

Under a letter dated September 18, 1952, Claimant was notified by Carrier's Superintendent that the evidence adduced at the formal investigation fully justified the conclusion he was guilty of violating the rules specified in the charge filed against him (namely those now set forth in the claim) and that by reason of such violations, considered both severally and collectively, he was dismissed from Carrier's service as of that date.

On October 4, 1952, Claimant filed a three headed claim with Carrier's Superintendent. Subsection (a) was a claim to the effect the investigation had not been conducted in accord with rules of the agreement; subsection (b) requested he be reinstated, with seniority rights unimpaired, and his

record cleared; and subsection (c) sought recovery for all time lost. The last three paragraphs of this claim are highly important to the point now under consideration and should be quoted. They read:

> "Your decision dated September 18, 1952, is not accepted, and your decision is hereby appealed.
>
> "We herewith submit for your early consideration, Claim (a), Request (b), and Claim (c), as set out in the heading of this letter.
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> "An early reply will be appreciated."

On October 14, following the filing of the foregoing claim Carrier's Superintendent gave Claimant formal and final notice such claim had been considered and denied. Subsequently, Claimant failed to give the Superintendent written notice of his intention to appeal from such decision to higher reviewing officers and attempts made by him more than 90 days thereafter to have such officials review it were denied on the basis the claim was not not properly before them and was deemed to have been abandoned.

On all dates in question there was in full force and effect between the parties an agreement which, for purposes here pertinent, reads:

> "ITEM 1: Time claims not submitted within 90 days of the date of occurrence will be deemed abandoned.
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> "ITEM 2: When time claims made within 90 days of the date of occurrence are declined, the employe affected, or his authorized representative, shall have 90 days from the date of notice declining claim to present a written grievance covering the claim to the Superintendent. If grievance is not filed within such 90-day limit the claim will be deemed to have been abandoned.
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> "ITEM 3: If grievance is filed within the 90-day limit, as provided in Item 2, and the claim is again declined, the employe, or his representative, shall have 90 days from the date of the latest decision of the Superintendent to advise the Superintendent in writing of intention to appeal to higher officer. If such notice of appeal in writing is not given the Superintendent within the required 90 day limit, the claim will be deemed to have been abandoned.
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> "ITEM 4: No grievance will be considered unless presented in accordance with Items 1, 2, 3.
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> "ITEM 5: The above time limitations embodied in Items (2) and (3) shall also apply to disciplinary cases."

The grounds on which Claimant relies to defeat Carrier's position are frankly and succinctly stated in his answer to the latter's ex parte submission, where the following statement appears:

> "As indicated on pages 5, 6 and 7, of our Submission, the Employes contend that the written notice given by Local Chairman in his letter dated October 4, 1952, addressed to Superintendent (Employes' Exhibit 'B'), constituted good and sufficient notice of appeal as contemplated by the rule and accepted practices thereunder."

Inherent in the foregoing statement, which we pause to note eliminates necessity for their further discussion or amplification, are concessions (a) that the agreement heretofore quoted requires written notice to the Superintendent of intention to appeal to higher officers, within the period of time therein prescribed, from his decision respecting a disciplinary decision such as is here involved; (b) that in the absence of such a notice any such claim or grievance is to be deemed to have been abandoned; (c) that under the

existing facts the date of the Superintendent's final and latest decision was October 14, 1952, from which no notice of intention to appeal to higher officers was ever filed; and (d) that the only notice of intention to appeal to such officers, herein relied on or even claimed to have been given, is the statement appearing in the first paragraph of the portion of the claim heretofore quoted, which was filed with the Superintendent on October 4, 1952.

One additional fact, not heretofore pointed out but nevertheless to be remembered, is that in the second paragraph of such portion of the claim Claimant definitely indicated he was submitting the claims set out in the heading thereof to the Superintendent for his decision.

In the face of a factual situation such as has been heretofore depicted and an unambiguous agreement clearly and definitely stating that the Superintendent must be advised of intention to appeal to higher officers within 90 days from his latest decision, otherwise a claim will be deemed to have been abandoned, it is asking too much of this Board to hold, as Claimant contends, that the reference to appeal appearing in his claim on October 4, 1952, constituted good and sufficient written notice of appeal to higher officers as contemplated by the existing contract. Indeed, in our opinion, any conclusion to the contrary would result in reading into that instrument something that the parties themselves did not see fit to place there.

Nor do we believe the foregoing facts, or others to be found in the record, disclose a practice warranting a conclusion Claimant was not compelled to give written notice of appeal to higher reviewing officers, in the manner, form and within the time, so clearly, unequivocally and specifically required by the terms of Item 3, as heretofore quoted, of the existing contract.

Based on what has been heretofore stated it necessarily follows, and we are therefore forced to conclude, that under the express terms of such contract Claimant must be deemed to have abandoned his claim on the property under conditions and circumstances which preclude a decision on the merits of his cause.

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 Employe involved in this dispute are respectively Carrier and Employe 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 claim must be denied because of Claimant's failure to comply with procedural requirements of the existing contract relating to the perfecting of appeals on the property.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 31st day of January, 1955.