

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Request that Dining Car Stewart L. R. Gardiner be returned to service with seniority and vacation rights unimpaired, and compensated for time lost from July 8, 1953, until date reinstated.

OPINION OF BOARD: Dining Car Stewart Gardiner, the claimant herein, was charged by the Carrier with certain derelictions in the handling of money and issuance of meal checks during the service of meals on June 27, 1953. After a hearing on these charges, he was discharged. The claim here is for reinstatement and compensation for time lost on the basis that a proper hearing was not held under the agreement rules, and that in any case the charges were not sustained by substantial evidence.

At the outset, however, we are met with a contention by Carrier that the claim in this matter was not filed within the time allotted by Rule 31(d) of the Agreement; and that therefore the claim was considered closed and may not be considered on its merits by this board. Rule 31(d) provides:

“Discipline cases not appealed to the manager within thirty days, or from the decision of the manager within thirty days, will be considered closed.”

The record shows that the hearing was held on August 1, 1953 and that the initial decision discharging claimant was handed down under date of August 6, 1953. On August 28, 1953, within the allotted thirty days, claimant filed an appeal with Manager Norris. Hearing on appeal was held on September 5, 1953, in accordance with the rule, and on September 8, 1953, Manager Norris rendered his decision denying the appeal and sustaining the discharge. Carrier contends that this decision of September 8, 1953 is the “decision of the manager” under Rule 31(d), and that the time for appeal from this decision expired thirty days thereafter.

Claimant disputes this contention, pointing to evidence in the record that the reinstatement of claimant was discussed at a conference early in February, 1954, followed by correspondence on the matter between General Chairman Johnson and Manager Norris under dates of March 26, 1954, April 5, 1954, May 20, 1954, and May 21, 1954. In the letter of May 21, Norris wrote: “. . . we would not be doing either our own service or the Stewards’ Organization justice if we were to consider his (Gardiner’s)

reinstatement at this time." Claimant contends that the matter of claimant's reinstatement was being progressed on the property until this letter of May 21, which was the "decision of the manager" under Rule 31(d). Carrier, on the other hand, argues that the case was closed at midnight on October 7, 1953, and that all discussion of the matter after that date concerned the reinstatement of claimant on a leniency basis and not as a matter of right.

It is not necessary, however, to resolve these conflicting contentions. The record shows that the first correspondence received by this Board concerning the dispute was a notice of intention to submit, filed under date of July 21, 1954. The only correspondence of any kind on the matter between Manager Norris' letter of May 21, 1954 and the notice of July 21, 1954 was a letter from General Chairman Johnson to Norris under date of May 24, 1954, confirming receipt of the May 21 letter, expressing disappointment in its contents and concluding with the following paragraph:

"Your decision contained in your letter of May 21, 1954, leaves me no other alternative than to progress this case to Division 3 of the National Railroad Adjustment Board, ex parte."

Assuming, but not deciding, that claimant is correct in its contention that the "decision of the manager" under the rule was the letter of May 21, 1954, it was not appealed from until July 21, 1954 at the earliest, a time lapse of well over the thirty days allowed by the rule. Contrary to claimant's contention, General Chairman Johnson's letter of May 24 did not constitute an appeal. At most, it put the Carrier on notice that claimant intended to file an appeal, but this did not relieve him of his responsibility under the rule to file it within thirty days.

The language of Rule 31(d) is clear. Since Manager Norris is the highest named official of the Carrier to whom an appeal may be made, an appeal from his decision must be an appeal to this Board. In providing that a case not appealed from the manager's decision within thirty days will be considered closed, the parties must have been limiting the time of appeal to this Board. Although we are reluctant to deprive any party of an opportunity to have his claim considered on its merits, once that claim is before us, our primary function is to carry out the intention of the parties as evidenced by the terms of the Agreement they have written; and where, as here, the parties themselves have clearly placed a limitation upon their right to come before us, we must accept and apply that limitation. Under Rule 31(d), by the failure of claimant to appeal within the prescribed time, the case was closed and we are barred from considering it on its merits.

Claimant has argued that the terms of Section 4(c)(2) of the agreement of December 12, 1947 between Carrier's Conference Committee and Brotherhood of Railroad Trainmen provides a one year appeal period for all claims, and that said Section is applicable to this case. However, an examination of that Agreement reveals that it became effective on February 1, 1948; and that the specific section involved referred to claims of all kinds. The current Agreement between the parties to this dispute became effective on March 1, 1948, a full month later than the agreement of December 12, 1947. Therefore, although the earlier agreement was applicable to these parties when made, it must be held that Rule 31(d) of the current agreement, having been later negotiated and dealing specifically with discipline cases, supersedes Section 4(c)(2), the older and more general rule.

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 under the terms of the Agreement between the parties, the case was closed before an appeal to this Board was filed.

AWARD

Appeal dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 21st day of October, 1955.