Award No. 8676
Docket No. DC-9199

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Horace C. Vokoun, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 351

JOINT TEXAS DIVISION OF CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY-FORT WORTH AND DENVER RAILWAY COMPANY
(Burlington-Rock Island Railroad Company)

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Local 351, for and on behalf of Freddie Lewis on the property of Joint Texas Division of the Chicago, Rock Island and Pacific Railroad Company and Fort Worth and Denver Railway Company, that he be restored to service with seniority unimpaired and compensated for net wage loss account of dismissal from service on May 1, 1956, in violation of current agreement.

OPINION OF BOARD: The Joint Texas Division is a railroad running between Dallas and Galveston in Texas, owned and operated jointly by the Rock Island Railroad and the Fort Worth and Denver Railroad. The Division is operated for a five year period alternately by the personnel of one or the other of the two railroads. However, Mr. C. W. Ruffner has been permanently named by both operating railroads as the highest officer of appeal.

There is a contract in evidence which has in it the following:

> "(b) An employe dissatisfied with a decision will have the right to appeal in succession up to and including the highest officer designated by the Company, if notice of appeal is given the officer rendering the decision within ten days thereafter. If the final decision shall be in favor of the employe his record will be cleared of the charge; or if suspended or dismissed the employe will be re-instated and paid for all time lost less amount earned elsewhere during suspension or dismissal.
>
> "(c) If no further handling is begun within ninety days following decision by the highest officer designated by the Company to handle labor disputes the case is closed and the Company's decision will stand as rendered."

On December 14, 1955, Mr. Ruffner addressed a letter to the General Chairman of the Dining Car Employees' Union, Local 351, Hotel and Restau-

rant Employees and Bartenders' International Union, part of which reads as follows:

> "As of January 1, 1956, the Fort Worth and Denver Railway Company will take over control and operation of the Joint Texas Division of the CRI&P-FW&D. Therefore, effective January 1, 1956, time claims will be handled as follows:
>
> "* * *
>
> "In matters pertaining to discipline and grievances the procedure will be as follows:
>
> "(1) Matters pertaining to grievances and discipline (discipline matters whether or not including time claims) will be submitted in writing direct to the Supervisor, Dining Car Service at Fort Worth, Texas.
>
> "(2) Appeal from decision of Supervisor, Dining Car Service will be made in writing to Assistant to General Manager, Fort Worth, Texas.
>
> "Please acknowledge receipt and understanding."

The letter was acknowledged by the General Chairman on January 24, 1956, in a letter which reads:

> "This will constitute acknowledgment of the context of your letter December 14, 1955 regarding the proper officers of your carrier to address Time Claims, Appeals, etc."

Under date of April 9, 1956, Carrier's Superintendent instructed its Supervisor of Dining Car Service, Fort Worth and Denver Railway Co., to issue instruction to the claimant to appear for an investigation.

A postponement was granted and the investigation was held on April 18, 1956 and under date of May 1, 1956, Mr. P. S. Cobel, Supervisor of Dining Car Service, advised the claimant of his dismissal from the service.

On May 8, 1956, the General Chairman advised Mr. C. W. Ruffner that—

> "This constitutes my appeal the case of Mr. Freddie Lewis your consideration from the decision of your Mr. P. S. Cobel as expressed in his letter of May 1, 1956, his file number 809-557 requesting that Mr. Cobel's decision be reversed and that Mr. Freddie Lewis shall be made whole.
>
> "* * *"

This letter indicates that a carbon copy was sent to a Mr. Wiley—"cc Wiley."

On May 11, 1956, C. W. Ruffner wrote W. S. Seltzer, General Chairman representing the claimant the following letter:

> "This will acknowledge your letter of May 8, 1956, the first paragraph of which reads:

'This constitutes my appeal the case of Mr. Freddie Lewis your consideration from the decision of your Mr. P. S. Cobel as expressed in his letter of May 1, 1956, his file number 809-557, Mr. Freddie Lewis shall be made whole.'

"Mr. P. S. Cobel's letter of May 1, 1956, to Mr. Freddie Lewis was a notice that he had been dismissed from service following an investigation. I cannot accept your appeal of this case to me as it was not made in accordance with Rules 24(a) and 24(b) of the current agreement. Any appeal of notice of dismissal will first have to be made in writing to Mr. P. S. Cobel, Supervisor, Dining Car Service, Fort Worth, Texas before it can be appealed to me. Your appeal, therefore, is not in accordance with the agreement and is not accepted nor recognized as an appeal until you have complied with the agreement."

The claimant pursued no further course on the property but appealed directly to the Board.

The claimant contended that to appeal to the Supervisor of Dining Car Service would be a vain act because he rendered the decision and in any event a copy of the letter of appeal to the highest officer designated by the company was sent to the Supervisor which satisfied Rule 24 requiring that "an employee dissatisfied with a decision will have the right to appeal in succession up to and including the highest officer designated by the Company, if notice of appeal is given the officer rendering the decision within ten days thereafter." (Emphasis added.)

The rule is well established that the Board is required to take the agreement as it is written and cannot rewrite it by interpretation nor by interpretation put in that which the patries have left out.

The jurisdiction of the Board is conferred by the Railway Labor Act, as Amended, and must be exercised in accordance with the terms of that Act and the agreement of the parties. We must adhere to prescribed procedure which we believe is basic and cannot condone indiscriminate departure therefrom, especially when objected to and recited in the handling of the question on the property, as in this case.

We feel that the understanding of procedure on appeal under rule 24 was clear and agreed to between the Carrier and the Organization and therefore the contentions of the Organization are without merit.

Although we are reluctant to deprive any party to have his claim considered upon its merits, we must hold that jurisdiction of this Board has not been properly invoked in the case.

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 case should be dismissed.

AWARD

Case dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 14th day of January, 1959.