Award No. 9815
Docket No. DC-9341

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 385

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of JOINT COUNCIL DINING CAR EMPLOYEES LOCAL 385 for and on behalf of EDGAR SPELL, waiter, on the property of the CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, that claimant be compensated for net wage loss suffered by reason of charges arising while claimant was assigned as No. 4 waiter, Train 16, November 18th and 20th, 1955; said discipline being imposed in violation of the effective agreement.

OPINION OF BOARD: Claimant was suspended from service by Carrier for a period of twenty days from November 25, 1955 to December 15, 1955. Request is made here that Claimant be paid by Carrier for such period of suspension.

There is an Agreement effective between the parties, as of September 1, 1949. The Organization here relies upon the provisions of Rule 8 (a) and contends Claimant was not furnished a fair and impartial investigation and hearing, specifically that the officer conducting the hearing was not the person who assessed the suspension of Claimant, by which action Carrier denied him a fair and impartial investigation and hearing.

Carrier denies any violation of the provisions of the Agreement and further contends that this Board must dismiss this claim for the reason that the Appeal here made, from the decision of the highest designated officer of Carrier was not filed within the provisions of Rule 8 (g) of the Agreement effective February 1, 1956.

The record here shows that final decision by Carrier was made January 13, 1956. That Notice of Intent to appeal to this Board was made November 30, 1956.

Rule 8 of the 1949 Agreement was amended by the parties, effective November 1, 1956. Carrier argues that Section (g) of the rule as amended,

contains a provision which provides all claims and grievances, shall be barred unless appeal to this Division is made within nine months from the date of the hearing officer's decision, in this case January 13, 1956 or ten months and seventeen days. The new 1956 Agreement, in Rule 21, effective February 1, 1956, also provides that such Agreement shall supersede and be substituted for all rules and existing agreements, practices and working conditions, etc.

The same question involved here was determined in Award 8479, this Division, covering the same Agreements and parties.

In view of the above Award, and its application here, the claim should be dismissed as provided in Rule 8 (g) of the 1956 Agreement.

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 herein is improperly before the Board.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of February, 1961.