

Award No. 11259

Docket No. MS-12403

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

E. R. KERNEL

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
(EASTERN LINES) AND THE
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

STATEMENT OF CLAIM: "E. R. Kernel was employed by ATSF RR as a maintenance-of-way employe at Kansas City, Kansas and was a member of the Brotherhood of Maintenance of Way Employees.

He was delinquent in his dues and on March 19, 1960 sent the delinquent dues, to-wit: \$23.00 to the lodge at Newton, Kansas.

On the same day the lodge sent a citation to the carrier, which in due time was passed on by the carrier to E. R. Kernel, and on April 6, 1960, his employment was terminated.

E. R. Kernel thought his check had taken care of it and did not request a hearing within the 10-day time limit.

When the lodge returned his \$23.00 check on March 25, 1960, Mr. Kernel did not understand the reasons, and he is unable to read very good and he thought it was because it was a personal check so he immediately sent the lodge, on March 27, 1960, a \$23.00 money order which was retained by the lodge until April 19, 1960.

When the money order was returned on April 19, 1960, the 10-days for appeal had expired, and although a request was made to the carrier and lodge for a hearing it was denied by the carrier on April 21, 1960, and by the lodge on July 28, 1960.

E. R. Kernel believes that since the lodge had his \$23.00 from March 19, 1960 to April 19, 1960, except for two days, that discharge is too severe a penalty. Likewise the failure of the lodge to grant him a hearing as provided by Sec. 12 (p. 92) Art. VII (Protective Dept.) of the constitution and by-laws of the lodge is a violation of the by-laws. He desires to be reinstated as eligible for work."

OPINION OF BOARD: This case grows out of Claimant's failure to maintain membership in the Brotherhood of Maintenance of Way Employees as required under the provisions of the Union Shop Agreement. The record establishes that he was removed from service in compliance with said Agreement.

In disposing of a similar situation we held in Award 9125:

“* * * The Carrier was not obligated to reinstate him after dismissal, even though he attempted to make payment to the Organization. * * *”

The request for reinstatement, as eligible for work, is without merit and will be and is hereby denied.

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, Organization and Employee involved in this dispute are respectively Carrier, Organization and Employee 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 Agreement was not violated.

AWARD

Claim disposed of in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of March, 1963