

Award No. 12490
Docket No. MW-13758

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it dismissed Assistant Railwelder C. E. Wolfe from service without just and sufficient cause.

(2) Assistant Railwelder C. E. Wolfe be reinstated to service with seniority, vacation and all other rights unimpaired and that he be reimbursed for all wage loss suffered.

OPINION OF BOARD: This claim arises out of the dismissal from service of the Claimant Wolfe for incompetence. It is contended by the Organization and strongly resisted by the Carrier that the discipline imposed was unwarranted and is violation of the Agreement.

The Carrier asserts that the claim should be dismissed by the Board for the reason that it has not been handled on the property level in accordance with the requirements of Rule 13(a) of the Agreement, the Time Limit Rule of November 4, 1954 (Article V of the August 21, 1954 National Agreement) and the provisions of Section 3 First, (i) of the Railway Labor Act.

The record shows that after proper notice an investigation was held on September 22, 1961, before the Division Engineer as a Board of Inquiry at the request of the Local Chairman of the Organization. On October 2, 1961, the Division Superintendent notified the Claimant of his dismissal from service by letter.

The pertinent provisions of the Agreement as amended, the Time Limit Rule and the Railway Labor Act are as follows:

"RULE 13

(a) Any claim or grievance by or for an employe must be filed in writing with the Division Engineer within sixty (60) days after its cause.

ARTICLE V

1 (a) All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. . . .

SECTION 3 FIRST (i) RAILWAY LABOR ACT

The disputes between an employe or group of employes and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

The officer authorized to receive claims involving Maintenance of Way Employes on this Carrier is the Division Engineer and at no time during these proceedings was a claim or grievance presented to him. We need not concern ourselves with the contention of the Organization that Rule 13 (a) of the Agreement has been fully and completely superseded by the provisions of Article V of the August 21, 1954 National Agreement, because under the latter Agreement all claims or grievances must be presented in writing to the officer of the Carrier authorized to receive same within sixty days.

The Organization asserts that even if the Board finds that the claim was not properly filed with the Division Engineer, the Carrier waived its contractual rights through the actions taken by its Superintendent. Specifically, it is argued that the Superintendent recognized a letter dated October 5, 1961, from General Chairman as a request for reinstatement of the Claimant to service. A careful review of this letter and subsequent correspondence establishes that the initial request on behalf of the grievant was for reconsideration of the penalty imposed by the Superintendent.

The first time that the actual claim in this dispute was submitted to the Carrier was by letter under date of October 31, 1961, addressed to the Chief Engineer-Maintenance. This officer is designated the second appeals officer by the Carrier.

Thereafter, the Carrier carefully preserved its exceptions to the claim during its further progress on the property and properly presented them to the Board for determination.

The requirements of Rule 13(a) and Article V 1(a) of the Agreement are mandatory. The Carrier at no time expressly agreed to waive these requirements and no valid basis for implying waiver has been established. (Awards 8383, 9189, 11623.)

Accordingly, the claim must be dismissed.

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 the claim is barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of May 1964.