

Award No. 16117
Docket No. CL-16873

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**
THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6197) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, particularly Rules 6-A-1 to 7-A-1, inclusive, when it imposed discipline of dismissal upon H. E. Wills, Laborer, Sunnyside Yard, Dining Car Department, Long Island City, New York, effective January 7, 1965.

(b) H. E. Wills should be restored to service with seniority and all rights unimpaired and his record cleared.

(c) H. E. Wills should be compensated in accordance with Rule 7-A-1(d) for all monetary loss sustained from January 7, 1965, until adjusted. (Docket 1659)

OPINION OF BOARD: The Carrier initially has entered a jurisdictional objection to the claim as filed, alleging that it has not been processed consonant with the provisions of Rule 7-B-1 of the basic Agreement. That rule reads:

"7-B-1. (Effective November 1, 1955) (a) Claims for compensation alleged to be due, may be made only by an employee, or by the 'duly accredited representative' as that term is defined in this Agreement, on his behalf, and must be presented, in writing, to the employee's immediate Supervisor within ninety days from the date the employee received his pay check for the pay period involved, except:"

Carrier contends that the above rule is clear in its pronouncement that all claims must be presented to the employee's immediate Supervisor. The Carrier assumes the posture that there are no exceptions to this requirement, and that by submitting this claim to the Assistant Personnel Manager, instead of Claimant's "immediate Supervisor", the Claimant stands in violation of the aforequoted 7-B-1.

The Organization, on the other hand, alleges that at the time the claim was filed, the Claimant was not working for the Carrier, and, hence, had no immediate Supervisor, as contemplated by Rule 7-B-1.

We cannot abide the interpretation placed on the applicable Rule by the employees, because to do so would, in our judgment, be an unreasonable distortion of the clear meaning and intent of the Rule. We agree with Carrier's contention that the only reasonable application of the Rule is that the term "immediate Supervisor" is that individual for whom the dismissed employee last performed compensated service.

We are constrained to state that we dislike to dismiss claims because of procedural defects in being presented to this Board. The grievance procedures and the entire area of free collective bargaining can best be served by a full adjudication of claims decided on their substantive merits. However, procedural defects cannot be countenanced, and both parties to the Collective Bargaining Agreement would be well advised to ensure that they avoid them at all costs. We will dismiss this claim because it is not properly before this Board. We do not have jurisdiction in the matter as presented.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 1st day of March 1968.