



Award Number 17294
Docket Number MS-18130

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, Referee

PARTIES TO DISPUTE;

CARL E. HUSTON

MISSOURI PACIFIC RAILROAD COMPANY, et. al

STATEMENT OF CLAIM: The Missouri Pacific, Omaha Division, charge of "dismissal" basically is due to an assumption that there had been "proper-notification" when, in fact, notification was most 'round about, improper, and late.'

I feel that the (unnecessary) charge was rigged and made account the railroads fear of, and to get out from under, some possible or potential separation or severance obligation should I actually decide to leave the division account abolishment of my job and with my 19 1/2 years of seniority.

I seek to clear the record (which was uncalled for in the first place), re-instatement of rights, or adjustment for the trouble, time, thought, and worries this unjust charge has caused me.

OPINION OF BOARD: The Claimant, an Agent-Telegrapher, was dismissed from service in July, 1966, following formal investigation held on June 30, 1966 "to develop facts and place responsibility for your having failed to protect your assignment as Agent at Goff-Corning, Kansas, Tuesday, May 31, 1966". Claimant is subject to the Agreement between Carrier and The Order of Railroad Telegraphers.

Claimant contends that he did not receive timely and proper notice ordering him to report to the assignment in question. He furthermore alleges that he did not receive timely and proper notice to attend the formal investigation on this subject held on June 30, 1966; therefore the holding of said hearing in his absence and the consequent finding on the basis thereof sustaining Carrier's charges and dismissing him from service are invalid.

Carrier, while denying Claimant's contentions both as to alleged procedural defects and as to the substantive merits of the dispute, interposes a contention that the merits of the claim cannot be considered by this Board because of Claimant's failure to have handled the claim "in the usual manner" up to the point of presenting it to this Board.

The record supports Carrier's contentions that,

(a) the usual manner for handling all claims and grievances on the Missouri Pacific Railroad Company is for the Claimant to file the claim initially with the Superintendent, with appeals thereafter

to the General Manager and Director of Labor Relations, in that order;

(b) the covering and controlling Agreement Rule provides that "an employee, or his duly accredited representative, dissatisfied with the discipline assessed shall have the right to file a claim or grievance with the officer who signed the notice of discipline and to appeal through the designated channel up to and including the highest officer designated by the management to handle time claims and grievances in accordance with Article V—National Non-Op Agreement of August 21, 1954" (Rule 16(f));

(c) following his dismissal, Claimant did not file a claim or grievance in the usual manner with the Superintendent or with the General Manager or Director of Labor Relations, nor was any claim appealed to any officer of the Carrier;

(d) from the period of Claimant's dismissal in June, 1966, up to the time of filing Notice of Intention to file ex parte submission on this dispute, with this Board (February 2, 1969), no claim or grievance was presented to Carrier by Claimant and the record is devoid of any direct communication to date on this subject from Claimant to Carrier.

We therefore find that this claim was not handled by Claimant in the manner required by the controlling Agreement, nor in the usual manner as required by Section 3, First (i) of the Railway Labor Act. We conclude therefrom that this claim must be dismissed because of procedural defectiveness barring the Board from Authority to consider or decide the claim on its merits (Awards 15015, 15384, 11182). (Fourth Division Award 1209).

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.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of July 1969.

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