

Award No. 18309
Docket No. MS-18913

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

ALBERT W. SMALL

THE INDIANAPOLIS UNION RAILWAY COMPANY

STATEMENT OF CLAIM:

(a) The Petitioner would represent that on or about August 20, 1969, he was wrongfully discharged from his position as crossing watchman with The Indianapolis Union Railway Company.

(b) At the time of the wrongful discharge, there was in full force and effect a Union Contract between the Indianapolis Union Railway Company and the Brotherhood of Maintenance of Way Employees; the Petitioner being a member in good standing of said Union at the time of the wrongful discharge.

OPINION OF BOARD: This dispute presents a claim by dismissed Crossing Watchman Albert W. Small, Sr., for reinstatement with seniority and back wages lost.

Rule 30(c) — Claims and Grievances — of the applicable Agreement governing the dispute provides in part as follows:

"(c) The requirements outlined in paragraphs (2) and (b), pertaining to appeal by the employe and decision by the carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the carrier to handle such disputes. All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employe or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3, Second of Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the 9 months' period herein referred to." (Emphasis ours)

The record shows that the Carrier's highest designated officer of appeal rendered his final decision in writing on October 1, 1969.

Proceedings were instituted before the Third Division, National Railroad Adjustment Board, by Petitioner's notice of August 13, 1970. This is, of course, much more than the nine (9) months after the date of the Carrier's decision.

Petitioner argues that further handling of the matter with both Carrier and Union has the effect of extending the time limit to the extent of such handling.

This Board has universally rejected identical contentions. Award 10688 (quoting First Division Award 18054), 11777, 12417, 14139, for example. The rule itself provides the method of extending the time limits. We have no power to vary the terms of a contract negotiated in conformity with the Railway Labor Act, as amended.

Therefore, since the claim in the present case was not appealed to the Third Division, National Railroad Adjustment Board, within nine (9) months from the date of the decision of Carrier's designated officer, it is barred and must, therefore, 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 Employee involved in this dispute are respectively Carrier 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 to the extent indicated in the Opinion; 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 25th day of November 1970.