

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19562  
Docket Number MS-19743

Gene T. Ritter, Referee

(Eugene Casey  
PARTIES TO DISPUTE: (  
(Burlington Northern Inc.

STATEMENT OF CLAIM: This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an ex parte submission on (30 days from date of this notice) covering an unadjusted dispute between me and the Burlington - Northern Railroad involving the question: Of a -----

Misunderstanding occurring on the job between agent and myself which resulted in me not being reinstated. Now seeking further investigation and consideration into the matter.

OPINION OF BOARD: The record in this dispute discloses that on August 14, 1970, Claimant, during his lunch period, indulged in drinking beer. That after Claimant returned to work, he was observed by the General Foreman to be walking in a peculiar manner and looking sick; whereupon, the General Foreman ordered the Claimant to depart the premises. Shortly thereafter, and on the same date, Claimant walked into the Agent's office and told the Agent he wanted to be fired and thereupon became profane, belligerent and threatening to the Agent. The Agent removed him from service pending an investigation. An investigation was ultimately held in connection with Claimant being intoxicated while on duty. During the investigation, Claimant admitted that he drank beer during his lunch period; that he was angry; and that he made threats as above set out. As a result of this investigation, Claimant was dismissed from service. The appeal to this Board was received by this Division in a letter from Claimant dated December 17, 1971. The letter stated that there had been a misunderstanding occurring on the job between the Agent and Claimant which resulted in Claimant not being reinstated. Claimant sought further investigation and consideration into the matter. Carrier takes the position that this Board can not assume jurisdiction for the reason that the claim was not handled in accordance with the law and regulations of this Adjustment Board; that this dispute is barred by the time limits contained in the Current Agreement; that this Board has no power to grant further investigation and consideration, as requested by Claimant; and that this Board is without power to order reinstatement in a discipline case involving a request for leniency.

The record in this dispute reveals that the Carrier's position to the effect that this Board can not assume jurisdiction because of improper handling and that the dispute is barred by the Time Limit contained in the Current Agreement, is correct. This dispute was not handled in the usual manner as prescribed by Section 3 First (i) of the Amended Railway Labor Act, and is, therefore, not properly before this Board. Also, this dispute was not properly handled in accordance with the rules and procedures of this Board. Awards Nos. 13307 (Kornblum), 17624 (Ellis), 17951 (without Referee), 18110 (Dorsey), 18133 (Dolnick), 18149 (Dorsey), 18380 (O'Brien), and 18417 (Dugan).

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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 be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*E. A. Killen*  
Executive Secretary

Dated at Chicago, Illinois, this 10th day of January 1973.