

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24107  
Docket Number CL-23782

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: { **Brotherhood** of Railway, Airline and Steamship Clerks,  
{ Freight Handlers, Express and Station Employees  
{ **Missouri-Kansas-Texas Railroad Company**

STATEMENT OF CLAIM: Claim of System **Committee** of the Brotherhood (GL-9294)  
that:

(1) The Missouri-Kansas-Texas Railroad Company violated the current **Rules** Agreement between the parties, DP-451. including but not limited to Rules' **26, 27, 30** and **32** when it failed to give Clerk W. L. Woodward, Glen Park Yard, **Kansas** City, Kansas, a precise notice for discipline assessed, held investigation at a time that caused her to lose **time**, did not afford her a fair and impartial investigation nor due **process** and they abused its discretion when it **arbitrarily** and capriciously **suspended** her **from** service for a fourteen (**14**) day period, June 17 through and including June **30**, 1979, **on** unproven charges.

(2) Carrier shall be required to compensate Ms. **Woodward** for all time lost including any overtime she could have worked and shall clear her service record of the charges and discipline assessed.

OPINION OF BOARD: Claimant, **W. L. Woodward**. was a Clerk at Carrier's Glen Park Yard, **Kansas** City, **Kansas** facility at the time this claim arose. By letter dated March **16**, 1979, Superintendent B. R. **Musick** advised Claimant that she would be suspended for twenty days (ten of which were deferred) because of alleged errors she made **on** March **13**, 1979.

Claimant requested a formal investigation on March 23, 1979. The investigation was held **on** April 19, 1979. By letter dated, April **27**, 1979, Superintendent **Musick** advised Claimant that based upon his investigation of the transcript she had violated Rules B and N of the **Uniform** Code of Operating rules by **committing** certain errors on March **13**, 1979. Thus, he reaffirmed her guilt as well as the suspension previously imposed.

By letter dated May 4, 1979, **Claimant** informed **Superintendent Musick** that his decision was unacceptable to her and that she was appealing her claim to Division Chairman D. J. Behrens for further handling on her behalf.

On June **3**, 1979, Division Chairman D. **J. Behrens** appealed Claimant's suspension to Carrier's General Manager, M. L. **Janovec**. From that date on the claim was handled in the usual manner on the property. It is now before this Board for adjudication.

The Organization maintains that the claim must be sustained on procedural grounds as well as on the **merits**. It argues that the **claim** was initially presented on April **19, 1979** during the hearing held to investigate the charges against Claimant. It notes that the denial of M. L. **Janovec** was dated July **12, 1979** or **more** than sixty days later, in violation of Rule **35 - Time Limits - Grievances**.

In addition, the Organization maintains that Claimant was not given the precise reasons for the discipline assessed in violation of Rule **26**.

**Fuethermore**, according to tie Organization, Carrier's insistence that the Claimant be the first witness to testify at the hearing resulted in the denial of an impartial and fair hearing for the Claimant. Since this was a disciplinary case, Carrier should have offered its evidence and witnesses first.

The Organization's final procedural **argument** is that Carrier improperly caused the Claimant to lose **time** from work **when** it scheduled the hearing on April **19, 1979**, in violation of Rule **30**.

As to the **merits**, the Organization asserts that the errors Claimant allegedly **made** on March **13, 1979** either were not in fact **committed** by the Claimant (if they **were committed** at all) or did not result in delays in delivery of goods. In sum, the Organization contends that a twenty day suspension simply **was** not warranted **under** the facts of this **case**.

Carrier, on the **other** hand, maintains that it is the Organization; and not itself, which has procedurally defaulted on this claim. According to Carrier, Claimant herself violated Rule 35(a) by failing to file her claim within sixty days of its occurrence with the properly **designated** Carrier officer. The claim arose on April **27, 1979**, when Northern Division Superintendent **Musick** found that, based on the evidence adduced at the April **19, 1979** hearing, that Claimant was guilty as charged. According to Carrier, Claimant did not, within sixty days thereafter, file a claim with the Terminal Superintendent at the **Kansas City** facility, Carrier's designated officer to receive initial **claims**.

Carrier further contends that Claimant was given a fair and impartial hearing on April **19, 1979**. It insists that it afforded Claimant all procedural protections.

As to the **merits**, Carrier asserts that the record **conclusively** establishes that **Claimant** did, **in** fact, **commit** the errors as charged. Thus, Carrier asks that this **Board** uphold its determination of guilt as well as the penalty imposed.

The rules which pertain to this dispute provide, **in** relevant part:

**"Rule 26 - ADVICE OF DISCIPLINE ASSESSED**

An **employee** who is disciplined shall be furnished **with** a letter stating the discipline assessed and the precise reason for same."

"Rule 27 - INVESTIGATION

An employe who has been in service more than sixty (60) days shall not be disciplined or dismissed without just cause and upon written request made upon the disciplining officer or agent, within ten (10) working days from the date of notification of discipline or dismissal, shall be given an investigation...."

"Rule 30 - INVESTIGATION AND WHEN HELD

Investigation shall be held when possible at home terminal of the employe involved and at such time as not to cause the employe to lose rest or time."

"Rule 35 - TIME LIMITS - GRIEVANCES

(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. Should any such **claim** or grievance be disallowed, the Carrier shall, within sixty days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not **be** considered as a precedent **or** waiver of the contentions of the Carrier as to other similar claims or grievances."

We must conclude that the claim be denied on procedural grounds. Rule 35(a) is mandatory. It requires that a claim be initially presented, **in** writing, **within** sixty days of its occurrence to the "officer of the Carrier authorized to **receive** same". It is undisputed that the officer so authorized was the Terminal Superintendent at the **Kansas** City facility. He did not receive a written appeal within sixty days of its occurrence.

This is so regardless of what date constitutes the "occurrence" in this case, for the oral statement by District Chairman D. C. Behrens at the April 19, 1979 hearing cannot be converted into a written statement simply because the hearing was transcribed. The fact remains that the Organization simply did not file a written initial claim with the officer designated to accept same.

The **Organization** also asserted that there is a practice of not following time limits. However, it has not shown that Rule 35 (a) was relaxed in cases of this type. Without **such record** evidence there is no merit to the argument that the parties have waived the time limits.

We note that the facts of this case are in accord with those in Award 8383. There we concluded, "there was no notice to the Carrier instituting the grievance and therefore, **there** was a failure to properly present this claim and Carrier may raise that issue at any time".

For the foregoing **reasons**, we must deny the claim without reaching the merits.

**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 Agreement was not violated.


A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By **Order** of Third Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, t h i s 14th day of January 1983.