

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25709
Docket Number MS-25841

David P. Twomey, Referee

PARTIES TO DISPUTE: (Terry L. Patton
(
(Southern Pacific Transportation Company
Eastern Lines

STATEMENT OF CLAIM:

"Was I terminated because my Union activities and was I denied representation by my Union?"

OPINION OF BOARD: The Claimant, Terry L. Patton, was notified by a letter from Superintendent Henson, dated May 19, 1984, which was hand-delivered at 8:00 A.M., on May 21, 1984, of the following charge:

"Mr. T. L. Patton
Train Dispatcher
San Antonio, Texas

"You are charged with responsibility for allegedly being under the influence of intoxicants while on company property when you reported for duty for your assignment as Train Dispatcher, San Antonio-Hearne district at approximately 11:00 PM May 18, 1984 which may be in violation of Rule G of the Rules and Regulations of Transportation Department, Southern Pacific Transportation Company.

"Hearing will be held in Conference Room, Superintendent's Office, 1174 East Commerce Street, San Antonio, Texas at 1:00 p.m., Wednesday, May 23, 1984.

"A. M. Henson"

The investigation was postponed until May 25, 1984 at the request of ATDA Office Chairman Loewe. By a handwritten letter dated May 22, 1984, Mr. Patton notified Superintendent Henson that he waived his formal investigation set for May 25, 1984. This letter was also apparently signed by Mr. Loewe. By letter dated May 29, 1984, Mr. Henson wrote to Mr. Patton informing him of his dismissal from the service of the Carrier as follows:

"PERSONAL

"Mr. T. L. Patton
Train Dispatcher
San Antonio, Texas

"For being under the influence of intoxicants while on Company property when you reported for duty for your assignment as Train Dispatcher, San Antonio-Hearne District at approximately 11:00 p.m., May 18, 1984, which is in violation of Rule G of the Rules and Regulations of the Transportation Department, Southern Pacific Transportation Company, you are hereby dismissed from the service of the Southern Pacific Transportation Company.

"Please arrange to return any Company property that you may now have in your possession, including any free or reduced transportation to Mr. J. L. Reininger, Assistant Manager, San Antonio, Texas.

"/s/ A. M. Henson."

Thereafter, Mr. Patton filed a Notice with this Board dated August 8, 1984, which stated as follows:

"Miss Nancy J. Dever, Executive Secretary
National Railroad Adjustment Board
10 West Jackson Boulevard
Chicago, Illinois

"Dear Miss Dever:

"This is to serve notice, as required by the rules of National Railroad Adjustment Board, of my intent to file an ex parte submission covering an unjustified dispute between me and Southern Pacific Transportation Company involving the question:

"Was I terminated because my Union activities and was I denied representation by my Union?

"/s/ Terry L. Patton
Terry L. Patton

"cc: Southern Pacific Transportation Company

American Train Dispatchers."

Mr. Patton, through his Attorney, James A. Kosub, filed a submission to this Board dated September 13, 1984.

Rules 25 and 26 of the controlling Agreement between the Carrier and the American Train Dispatchers Association provide for the proper presentation and progression of claims and grievances, and a sixty day time limit from the date of occurrence on which a claim or grievance is based for the filing of a claim or grievance.

Mr. Patton's claim was not presented on the property in the usual and customary manner. This Board is precluded from considering the claim on its merits, since Mr. Patton has not complied with Section 3, First (i) of the Railway Labor Act or Circular No. 1 of the N.R.A.B. The Act requires the claim to be handled in the "usual manner up to and including the chief operating officer of the carrier..." The same requirement is incorporated in the Board's Circular No. 1. We are compelled, therefore, to dismiss the Claim.

We also point out to Mr. Patton that to the extent that his Claim is a dispute between an employee and his Labor Organization, this Board is without jurisdiction to decide any such dispute. Section 3 First (i) limits the disputes that may be referred to this Board, to those "between an employee or group of employees and a carrier or carriers".

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 Employes involved in this dispute are respectively Carrier and Employes 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:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of November 1985.