

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: "Claim on behalf the General Committee of the Brotherhood of Railroad Signalmen on the Elgin, Joliet and Eastern (EJE) Railroad:

Statement of Claim

(a) Carrier violated the parties Working Agreement as amended, particularly Discipline Rule 76, when on Wednesday, November 22, 1989, Claimant was removed and dismissed from service as a result of an investigation held November 17, 1989.

(b) As a consequence of such action, Carrier be required to make Jerald D. Dawson, ID No. 82642, whole for all wages and benefits lost including but not limited to normal wages, holiday pay and overtime Claimant would have earned had Carrier not taken such action; premiums for all employee and dependent group medical and life insurance; and clear Claimant's service record of all reference to such charges, including all seniority, vacation and holiday rights unimpaired." G.C. File 89-29-EJE. Carrier file RS-4-89. BRS Case No. 8114-EJE.

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant entered Carrier's service on June 2, 1977, as a Signal Helper. On October 24 and 25, 1989, he was regularly assigned and qualified as a Signal Maintainer at West Chicago, Illinois, when a Federal Railroad Administration Inspector discovered numerous defects in the equipment which Claimant was charged with maintaining in proper working order. As a result of these discovered defects, Claimant was notified, in writing, on November 3, 1989, to appear for an investigatory Hearing scheduled to be held on November 9, 1989. The Hearing was postponed by mutual consent and held on November 17, 1989. Claimant was present at the Hearing, he was ably represented, and he testified on his own behalf.

Subsequently, by letter dated November 22, 1989, Claimant was notified that he was found guilty of the charges and was dismissed from Carrier's service. The November 22, 1989 letter of dismissal contained the following statement:

"For your responsibility as outlined above, and a review of your prior record, you are hereby dismissed
* * *."

The dismissal was appealed through the appropriate appeals procedures and was ultimately denied by Carrier's highest appeals officer on April 3, 1990.

At the outset, Carrier has challenged the timeliness of the Organization's appeal to this Board. The record shows that the Notice of Intent to file with this Board was dated January 7, 1991. That date, Carrier says, was beyond the "9 months from the date of said officer's [highest appeals officer] decision."

Our review of the record in this case supports the contention of the Carrier. The precedent is clearly established that when a Claim is not progressed to this Board within the prescribed time limitations, there is no alternative but to dismiss the Claim. See Third Division Award 25130 and Awards cited therein.

However, having said that, if we had been able to reach the merits of this case, we would have concluded that there was substantial evidence in this record to support the action as taken.

The Organization's argument that Claimant's prior record was referenced for the first time before this Board is clearly misplaced. The reference to the prior record was made in the original notice of discipline and was never challenged throughout the on-property handling of the appeals. It was, therefore, entirely proper for the Carrier to consider this extensive prior discipline record when determining the degree of discipline to assess in this instance. The sum total of the proven derelictions in the instant case and the less than exemplary prior discipline record negates any argument that the imposition of discipline of dismissal was excessive or capricious.

Form 1
Page 3

Award No. 29354
Docket No. SG-29669
92-3-91-3-25

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 25th day of August 1992.