Award No. 2222
Docket No. PM-2080

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Fred L. Fox, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: For and in behalf of Tobias Clark who is now, and for a number of years past has been, employed by The Pullman Company as a Porter operating out of the New York Central District of New York City, New York. Because The Pullman Company did, under date of February 7, 1942, discipline Porter Clark by suspending him for four (4) weeks upon charges unproved; which disciplinary action was unreasonable, unjust and in abuse of the company's discretion.

And further, for the charges against Porter Clark to be cleared from his record and for Porter Clark to be reimbursed for the wages lost because of this unjust and unreasonable action.

OPINION OF BOARD: This is a discipline case. The petitioner, employed by the carrier, The Pullman Company, as a porter, operating out of the New York Central District of New York City, N. Y., was suspended, presumably without pay, for a period of four weeks, on charges which are set out in extenso in this award. These charges were preferred on January 6, 1942, and a hearing held thereon on January 27, 1942, at which hearing the petitioner was present and was represented by counsel and by two members of the Brotherhood Grievance Committee. The hearing was conducted on the part of the carrier, by its District Superintendent, two Assistant District Superintendents, and a representative of its Industrial Relation Department. The case for the carrier is made up of letters and statements of employes of the Pullman Company, and the railway company over whose lines Pullman operated, and one passenger. Representatives of the management made statements at the hearing, but not in relation to the specific charges which petitioner was called upon to answer. At the beginning petitioner's counsel asked that the persons who made the statements bearing upon petitioner's alleged conduct be produced, and this request was declined, although he was told that any witness he might himself produce would be heard. No such witnesses were produced, and petitioner's defense consisted of his own statements in explanation of his conduct, which contradicted in many important respects, the charges filed against him. The questions raised are of such a nature as would, if we were to take jurisdiction of the case, deserve careful consideration. The claim of the petitioner is (1) that he was entitled to have present, for the purpose of questioning, the persons who made the charges against him, particularly the employes of The Pullman Company and the Railway Company; (2) that in sustaining the charges against him the carrier acted in an arbitrary and capricious manner, and without evidence to sustain its action; and (3) that the record shows that the charges filed, particularly by the employes aforesaid, grew out of animus on their part, and amounted

to a conspiracy to "frame" the petitioner. Of course, the carrier disclaims any connection with any such conspiracy, if it existed, and defends it action as one warranted by the showing made at the hearing, and as one coming within the discretion vested in it in the enforcement of discipline among its employes.

A serious question of jurisdiction is presented. As stated above, the hearing on the charges was held on January 27, 1942. On February 7, 1942, petitioner was notified by District Superintendent Zimmer that on the charges heard, it had been decided to suspend him for a period of four weeks, effective February 8, and continuing through March 8, 1942. On appeal to the management in Chicago, the suspension was approved, and on March 27, 1942, notice given of this action by B. H. Vroman, Assistant to the Vice President of the carrier, by letter directed to M. P. Webster, Chairman of the Executive Board of the Brotherhood, who filed petitioner's claim herein. The claim was filed on April 27, 1942, thirty-one days after the final action of the carrier on the suspension.

The carrier contends that under Rule 53 of the agreement, as it has existed since October 1, 1937, this Board is without jurisdiction to hear and determine petitioner's claim because not filed within thirty days after the carrier's final action in the matter of his suspension. Rule 53 of the agreement, effective October 1, 1937, to the extent that it applies to the jurisdictional question before us, reads:

> "If the grievance is not satisfactorily adjusted by the officer in charge of the Zone, the person aggrieved shall have the right, within ten (10) days from the date decision is rendered, to appeal to the Assistant to Vice President in Chicago or to such other operating officer as may be designated from time to time by the Vice President in charge of operations. Conference shall be held within ten (10) days after appeal is received, and decision shall be rendered within ten (10) days after the conference is completed. Any further appeal in accordance with provisions of the Railway Labor Act shall be taken within thirty (30) days thereafter."

A subsequent agreement was negotiated and made effective as of June 1, 1941, and controls this case. The pertinent provisions of that Rule are:

> "Rule 53. Appeals. If the grievance of an employe who has served his period of probationary employment is not satisfactorily adjusted by the district representative, the person aggrieved shall have the right, within twenty (20) days from the date decision is rendered, to appeal to the Assistant to Vice President in Chicago or to such other operating officer as may be designated from time to time by the Executive Vice President. Conference shall be held within ten (10) days after appeal is received, and decision shall be rendered within ten (10) days after the conference is completed. Any further appeal in accordance with provisions of the Railway Labor Act shall be taken within thirty (30) days from date decision is rendered."

While the agreement of October 1, 1937, was in effect, to-wit, on October 20, 1938, this Board, in Award 743, without the aid of a referee, by language quoted below, clearly outlined the meaning and intent of Rule 53, as it then existed:

> "As to the meaning and intent of Rule 53, the Board holds that the time limitations of the rule mean calendar days, not excepting Sundays and Holidays, and begin to run from the dates of the decisions rendered by the Management. As the parties have not had a uniform understanding as to the application of these limitations, and as the excess over the prescribed time was only two days in making the final appeal in this case, the Board, in the interest of disposing of this particular case and giving the parties a definite interpretation to govern them in the future, accepts the case and renders decision on the merits."

It is clear that the holding in Award 743 applies to Rule 53 of the current agreement, the change in the Rule, on the vital point here involved, being inconsequential.

Of course, Rule 53 of the agreement of October 1, 1937, has been superseded by the Rule of the same number contained in the agreement of June 1, 1941, and has no bearing on this dispute, except as history of the development of the Rule, and the awards of this Board thereon. Both agreements stand as the contract of the parties, and, presumably, were entered into with the intent that they should bind the parties thereto. From a reading of Award 743, it appears that there was not, at that time, a uniform understanding between the parties as to the application of the limitations contained in the rule, and, for the express purpose of clearing up any misunderstanding, that award was written. The Board took jurisdiction of a claim that had been filed two days late, and sustained the claim, but gave fair warning that the rule, as interpreted by that award, would govern in the future.

Courts and Administrative Boards are always reluctant to dispose of cases in such a way as to preclude consideration of their merits; but it is sometimes necessary to do so. We think this is such a case. The rule is clear and unambiguous. There can be no doubt of its meaning. That meaning was interpreted and applied in Award 743, and since that award, it is said, no case has been presented in which the limitation feature of the rule has been raised. Therefore, we may treat it as a question which all parties to the agreement have considered as settled. If we now re-open the question, what will be the result? Inevitably, misunderstandings and a return of the confusion formerly existing. That petitioner's representative may have made a mistake, and that his appeal was only one day late, cannot be considered. If once we depart from the rule because some one neglected to act, made a mistake, or only delayed one day, where would we draw the line? Settled procedure, adopted by the parties themselves, should not be disturbed for such reasons. We are, therefore, of the opinion that by reason of the failure of the petitioner to file his claim with this Board within thirty days from March 27, 1942, we have no jurisdiction to decide the case. This being true, it would be improper for us to comment on the merits of the claim. The claim will 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 employe involved in this dispute are respectively carrier and employe 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 by reason of the failure of the petitioner to file his claim with this Board within thirty days from March 27, 1942, the Board is without jurisdiction to pass upon the claim.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 29th day of June, 1943.