Award No. 3819
Docket No. CL-3719

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

CHICAGO PRODUCE TERMINAL COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Mrs. Ann Kathleen Doyle now be restored to her position of Telephone Operator, rate $7.32 per day, with all of her rights unimpaired and that she be compensated for all wage loss sustained account having been removed from her position and the service of the Chicago Produce Terminal Company, effective August, 16, 1946, in violation of the rules of the Clerks' Agreement.

EMPLOYES' STATEMENT OF FACTS: On the morning of August 15, 1946, Mrs. Ann Kathleen Doyle, Telephone Operator at the Chicago Produce Terminal Company, received a summons to the office of Mr. Swartz, Superintendent, and after calling his Chief Clerk, Mr. Washburn, into his office, Mr. Swartz requested Mrs. Doyle to resign from the service of the Company, placing a previously prepared document before her for signature, which document Mrs. Doyle refused to sign. Mrs. Doyle was then told by Mr. Swartz that if she did not resign she would be discharged. Upon asking the reason for such discharge, Mrs. Doyle was told by Messrs. Swartz and Washburn that she had not been nice to the dealers, and was accused of listening in on Mr. Swartz' and Mr. Washburn's telephone line. Mrs. Doyle requested Mr. Swartz to give her written notice of her discharge setting forth the reasons therefor which was refused. Instead, Mrs. Doyle was issued a time check for all time due her and sent home.

Mrs. Doyle contacted Local Chairman Walter T. Thorpe on the morning of August 16, 1946, and related the events occurring on August 15, 1946 surrounding her discharge by Superintendent Swartz on that date. Mr. Thorpe thereupon called Chief Clerk Washburn on the 'phone and protested the treatment afforded Mrs. Doyle, and Mr. Washburn requested him to stop at the office and discuss the case. Mr. Thorpe called at the office of the Chicago Produce Terminal Company on the morning of August 17, 1946 and again protested the treatment Mrs. Doyle received and requested Messrs. Swartz and Washburn to hold an investigation. Mr. Swartz readily agreed to hold the investigation, but stated that he was scheduled to go on vacation and would prefer to delay the matter until his return. Mr. Thorpe called his attention to the seven day time limit provision of the current agreement for holding investigation and stated that he would not be agreeable to such delay without Mrs. Doyle's consent.

Mr. Swartz departed on vacation without notifying Mrs. Doyle in writing of the precise nature of the charges preferred against her as pro-

resigned of her own volition and that no charges or hearing are necessary to terminate the employment relationship of an employe who resigns of his or her own accord.

If Superintendent Swartz had had any intention of dismissing Mrs. Doyle on the morning of August 15, 1946, it would have been a simple matter for him to have informed her of her unsatisfactory service with a request that she report for an investigation of her case. Superintendent Swartz had no desire to discipline Mrs. Doyle, but was only interested in having her correct her many deficiencies and thus improve a very unsatisfactory situation that was affecting the good will of the Carrier's patrons as well as the relationship of the Carrier's employes. Mrs. Doyle was unwilling to accept constructive criticism and elected to resign. She was not dismissed as contended by the Brotherhood representatives and was, therefore, not entitled to an investigation under the provisions of Rule 23 of the current agreement. Her resignation was not procured by coercion or intimidation and **the Brotherhood representatives have not, in the handling of this dispute on the property, presented any evidence that it was.** While it is true that Mrs. Doyle's resignation was verbal, it was nevertheless submitted of her own volition and was entirely binding upon both her and the Carrier. There is no agreement rule or other authority under which the Carrier could insist that an employe confirm his or her verbal resignation with a written one if the employe did not care to do so. Mrs. Doyle was, at her own request, immediately relieved of her assignment on the morning of August 15, 1946 and was given a time check to cover all services as then not paid for. If Mrs. Doyle felt that she had been unjustly treated or had a grievance, it was her right under Rule 30 of the current agreement to complain and request a hearing, **provided she presented her grievance in writing within ten days following the date of the occurrence which gave rise to her alleged grievance.** Rule 30 of the current agreement reads, in part as follows:

> "Any grievance which may exist may be presented in writing to the employing officer within ten (10) days of its occurrence for settlement. If decision of the employing officer is unsatisfactory, it may be appealed to the superintendent within thirty (30) days. In case the employe shall not be satisfied with the decision, he shall have the right to appeal to the highest officer designated by the operating company to handle such matters."

No written complaint or request for a rehearing was received from either Mrs. Doyle or the Brotherhood representatives within the ten-day time limit prescribed in Rule 30 and it is thus apparent that she was aware that she had resigned from the Carrier's service, recognized that her verbal resignation was bona fide and that she had no justifiable grievance under the agreement rules. In this connection, it will also be noted from the Carrier's Statement of Facts that notwithstanding that the Brotherhood representative was fully informed regarding the circumstances surrounding Mrs. Doyle's resignation, **no written complaint or grievance was received from either Mrs. Doyle or the Brotherhood representatives until September 9, 1946 when the instant claim was first presented by Division Chairman Conroy, some 24 days after the occurrence on August 15, 1946 which gave rise to this dispute.** It is obvious that the Brotherhood's claim in behalf of Mrs. Doyle is nothing more than an afterthought.

In conclusion, the Carrier asserts that the Brotherhood's complaint in this dispute is foreclosed by the provisions of Rule 30 of the current agreement and should be denied in its entirety. The Carrier also asserts that its position in this dispute is clearly in accord with the conclusions of the majority in Award 3100 which denied a very similar claim in Third Division Docket PM-2886, which is hereby referred to and made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: The claimant herein contends that she was discharged without notice or hearing on August 15, 1946, and claims that she should now be restored to her position and compensated for all wage loss.

The Carrier on the other hand contends that the Claimant voluntarily resigned her position and that if she had been discharged as claimed or had been forced to resign Rule 30 of the Current Agreement required her to present a grievance thereon in writing within ten days after such discharge or forced resignation; and that her failure to present such a grievance within the specified time bars her right to thereafter present such grievance.

Rule 30 of the Agreement entitled "Grievances" provides that,

> "Any grievance which may exist may be presented in writing to the employing officer within ten (10) days of its occurrence for settlement. If decision of the employing officer is unsatisfactory, it may be appealed to the Superintendent within thirty (30) days * * *."

The Brotherhood insists that "Rule 30 provides only that a grievance **may** be presented in writing within ten days from its occurrence. It is not mandatory that a grievance be so handled." In Award 1411 of this Board in an opinion by Judge Royal A. Stone as referee this Division said of an identical rule,

> "The word 'may' taken in its context and application to its subject matter must be considered as synonymous with 'shall' or 'must'. That is, presentation in writing of the grievance, whatever it may be, within a 10 day period is intended to be mandatory and condition precedent to consideration of the grievance on the merits."

We are still of the opinion that this is a correct interpretation of the word "may" as used in said Rule.

Said Award 1411, Award 1060 and other Awards of this Division have held that such provision of a grievance Rule may not be used as a limitation upon the presentation of a claim for money or wages, but seem to recognize the fact that such a provision constitutes a valid time limitation on the presentation of grievances for unjust treatment "arising in the course of railroad operation". There are conflicting Awards of this Division as to such a provision not constituting a proper or valid limitation on a money claim.

Award 3053 of this Division considered a similar rule of the agreement there under consideration as the appropriate rule under which an employe who felt that she had been unjustly treated might present her grievance. In that Award it was said:

> "We do not question that an employe may resign his position by action or conduct indicating clearly an intent to so do. But where the Carrier concludes from conflicting evidence that any employe did in fact resign, and the employe feels himself unjustly treated by such decision, he is entitled to an investigation when the request therefor is **timely** made. * * * When the Carrier declined to recognize as true her assertions that she had no intention to and did not resign, and felt that she had been unjustly treated, Mrs. Thornhill, the Claimant, was entitled to an investigation **if requested in the manner provided for in the Agreement."** (Our emphasis.)

In that case there was an affirmative Award because the Claimant was refused an investigation after she had requested it in writing and within the seven-day period of limitation as provided by the rule.

Award 3100 of this Division held that the question of an alleged forced resignation of an employe should have been presented under the provisions of a rule which said:

> "An employe who considers he has been unjustly treated and who desires a hearing shall make written request containing his specific charge within thirty (30) days from the date of the cause of complaint."

This Division there held that, "For failure of the Claimant to request a hearing within thirty (30) days from the date of the cause of his complaint, the claim must be denied."

We have been cited to Award 2806 of this Division and to Awards 5166, 6272 and 11879 of the First Division as holding that disciplinary action without notice and hearing, in violation of the applicable rule on discipline, is void and that failure to appeal therefrom cannot validate a void dismissal. The reasoning on which those Awards are based is given only in Award 2806. There it was said, "Since no charge was preferred against Claimant and a hearing on any charge was denied him there was nothing from which he was required to or could appeal."

It does not follow, however, that an employe working under an Agreement containing a rule similar to Rule 30 involved in this case is not required to comply with the provisions of such rule if he desires to present a grievance for unjust treatment such as a discharge without a hearing or a forced resignation.

Because the Claimant here failed to comply with Rule 30 the claim must be denied without a consideration of the claim on its merits.

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 no violation of the Agreement has been established.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 22nd day of March, 1948.