

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

1. Carrier violated the provisions of Rule 22 of the current Clerks' Rules Agreement when the District Storekeeper, an officer subordinate to the General Storekeeper, charged Local Storekeeper M. F. Leighty with being "insolent and insubordinate" to the General Storekeeper; subsequently held an investigation on those charges, during which the Organization was denied the right to secure witnesses for testimony in defense of Employee Leighty; and following such improper investigation, dismissed Employee Leighty from service.

2. The investigation held on September 15, 1954 shall be declared improper.

3. Carrier also acted contrary to the procedures contemplated by the Railway Labor Act for the peaceful settlement of claims when the General Storekeeper, after refusing Employee M. F. Leighty, Local Storekeeper at Ottumwa, Iowa, the right of representation by his organization, questioned Employee Leighty in connection with claims he had filed; made an incomplete and incorrect stenographic record of the conversation between the General Storekeeper and Employee Leighty and demanded that Employee Leighty sign the transcript of that conversation.

4. Employee Leighty shall be reinstated to the Local Storekeeper position at Ottumwa, Iowa with seniority and all other rights unimpaired.

5. Employee Leighty shall be compensated for all loss sustained from September 22, 1954 until such time as he is returned to his position of Local Storekeeper.

OPINION OF BOARD: Carrier initially raises the question of jurisdiction here on the ground that the appeal was not "filed with the next highest

official" within the 30 days allowed under Rule 22 (d) and (e) reading as follows:

"(d) If an appeal is taken from any hearing, it must be filed with the next higher official and a copy furnished the official whose decision is appealed within thirty (30) days after the date of the decision. A hearing on the appeal will be held within thirty (30) days from the date filed.

"(e) The time limits provided in this rule may be extended by mutual agreement."

Employes' reply is:

"* * * The 'next higher official' to whom appeal could be made and by whom 'A hearing' would be held, was carrier's General Storekeeper, Mr. Ireland. It was this latter carrier officer who ordered the charges preferred against Claimant and who appeared as carrier's principal witness. Most certainly this carrier officer had already declared and shown his prejudice and thus, estopped himself from handling an appeal and hearing thereon. It was the carrier, not the Employes who violated Rule 22(d), since Claimant was deprived of his contractual right to a fair and impartial hearing on appeal, by carrier's General Storekeeper, the 'next higher official.'"

To sustain this contention Employes rely particularly on Award 7021 which says in part:

"* * * By participating in and giving his written approval to the initial decision, the Superintendent made it his own and so prejudged, denied and nullified the right of appeal to him."

This makes a very persuasive argument but it assumes too much to be adopted as a general rule. It assumes that simply because the same official who by virtue of the rule has to function in a dual capacity of prosecutor and judge, that a fair trial cannot be had.

In the case before us Claimant was charged with "being insolent and insubordinate to Mr. G. V. Ireland, General Storekeeper while at Ottumwa, Iowa, on July 28 and 29, 1954."

Hearing was had on these charges in due time and the Claimant was represented by two Vice General Chairmen and the Division Chairman. In the early part of the hearing Vice Chairman Nelesen said:

"Mr. Ireland wants all this in the record. The Organization is glad to hear that and we will see that everything that is said is put into the record."

So we assume it is all here, and we say, that regardless of who was presiding, or assisting the Carrier in the presentation of supporting evidence there is ample uncontradicted evidence that claimant was "insolent and insubordinate" to his superior officer, and at the close of the hearing Mr. Baker asked one of the Senior Vice Chairmen, "Mr. Hopper, do you feel that Mr. Leighty has had a fair and impartial hearing?" to which Mr. Hopper replied that Leighty had not "* * * for the reasons stated at the outset of this investigation. * * *"

Turning back to the outset of the investigation we find that the only reason was that the charge was too indefinite but in view of the fact that everything went into the record, whatever error there may have been in the generality of the charge (which we do not concede) it was cured by the full opportunity of the Organization's representatives to present anything they had to offer.

Certainly it cannot be argued that Award 7021 is controlling here. As will be noted there is only the one exception to Rule 22(d) viz., (e) whereby the time can be extended by mutual agreement, and that is all there is.

It is not our province to add or detract from it.

There is more reason why the rule should be applied here than there was in Award 6864, because in that case the Organization at least tried to give notice of appeal.

In conclusion we say that the Carrier's plea of limitations is good and the claim should 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 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 Carrier's plea of Rule 22(d), the 30 day limitation on appeal is good.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 28th day of March, 1958.