

Award No. 8474

Docket No. CL-8207

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

William H. Coburn, Referee

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**PARTIES TO DISPUTE:**

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

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

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

1) Carrier has adopted an arbitrary and capricious attitude concerning the request for reinstatement of Employee Frank Brewa, check clerk in the Store Department, Milwaukee Shops, Milwaukee, Wisconsin, and has been inconsistent in its contention concerning the fitness of employee Brewa as an employee and has applied discipline in an excessive and discriminatory manner.

2) Employee Brewa shall be reinstated to his former position in the Store Department with his name restored to the seniority roster for District No. 118, and shall be compensated for wage loss suffered retroactive sixty (60) days from date of this claim, or September 30, 1955.

**OPINION OF BOARD:** This is a discipline case. After proper notice, an investigation was held on September 18, 1952, of the charge that Claimant had been intoxicated during his assigned working hours, that he had been absent without permission from his assignment during working hours, and for insubordination on September 11, 1952.

The charges against Claimant were filed by Carrier's General Storekeeper and that same official conducted the investigation which was held on September 18, 1952.

On September 24, 1952, Claimant was notified by the General Storekeeper that he was dismissed from the service of the Carrier as of that date.

No appeal was taken from this decision as provided for under Rule 22(d) of the effective Agreement. That rule reads 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."

However, on November 5, 1952, the local committee requested the General Storekeeper to reconsider the dismissal. The request was denied. The General Chairman thereafter made several requests of the Carrier that Claimant be reinstated. These were essentially requests for leniency and the case was so handled on the property until November 28, 1955. At that time the General Chairman reiterated his plea for leniency on behalf of Claimant and also presented a claim based on an alleged rule violation by the Carrier. Restoration of seniority rights and back pay, in addition to reinstatement of Claimant to his former position, were included in the claim.

On December 22, 1955, the Organization served notice of intent to file its submission of the claim to this Board.

On January 3, 1956, the Carrier replied to the aforesaid letter of November 28, 1955, declining the claim and alleging it had been barred because of failure to appeal the initial decision of dismissal.

The Organization now contends that this claim is not barred because the Carrier violated the intent of Rule 22 to provide a fair and impartial trial of the accused when it permitted the same official who filed the charges to conduct the investigation and make the decision.

We find this contention comes too late to warrant consideration. A number of defenses, including the foregoing, might have been available to the Claimant, had they been timely raised under the provisions of Rule 22. But here it is conceded that no appeal was made within the time limitations of the rule from the decision of dismissal. The evidence of record is clear that the local committee and the General Chairman treated the case as a matter of leniency throughout the entire negotiation on the property until in November of 1955 it was decided to file a formal claim.

Under the facts of record this Board finds that the failure to file a timely appeal under the rule bars a subsequent claim such as the one presented here. This finding is not a new or novel approach to situations of this kind. In First Division Award 5217 (Carter) it was held:

"The rule governing the foregoing situation is as follows: when an employe is charged with a violation of the rules of the company, notice given and a trial had, the failure of the employe to appeal within the required time, terminates the controversy. In other words, where jurisdiction of the subject matter and the person have been obtained and all necessary procedural requirements have been met, the accused must appeal within the time prescribed if he feels aggrieved at the result, otherwise he will be deemed to have acquiesced in it. Under such circumstances, the result is final even though it may be erroneous. \* \* \* we are obliged to hold that if all jurisdictional and procedural requirements have been complied with, the failure of the employe to appeal precludes him thereafterwards from complaining."

Here the Organization, after the time for appeal expired, chose to pursue the matter on a leniency basis and that is the way in which this controversy was handled on the property until what had been a plea for leniency blossomed into a claim on November 28, 1955—some three years after the decision of dismissal was handed down. It is evident that the claim as such was never handled in the usual manner on the property as required by Section 3, First (i) of the Railway Labor Act.

In view of the foregoing, we find and hold that the claim must be, and is, 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 did not violate the Agreement.

#### AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September, 1958.