

Award No. 8476
Docket No. TD-9028

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The action of the Southern Railway Company, hereinafter referred to as the "Carrier", was arbitrary, whimsical, discriminatory, and contrary to the wording and intent of paragraph (a) of Article 11 of the currently effective Agreement between the parties when, on or about December 15, 1955, it refused to grant Train Dispatcher W. S. Gay a hearing upon his request pursuant to Article 11(a), and

(b) Because of the Carrier's unwarranted action, it shall now reinstate Train Dispatcher W. S. Gay to service as train dispatcher with seniority rights unimpaired, and shall compensate him for all wage loss commencing with December 15, 1955 and ending when he is returned to service of the Carrier.

OPINION OF BOARD: The relevant facts here are that Claimant, an extra Train Dispatcher, was dismissed for violation of operating rules, after proper notice, investigation and hearing, and in compliance with the procedural requirements of Article 10, the discipline rule of the effective Agreement.

Claimant admitted responsibility for the violation as charged and made no appeal from the decision of dismissal.

Thereafter, the Organization intervened with the Carrier on behalf of Claimant, requesting reinstatement on grounds of leniency. These requests were refused by the Carrier. Finally, formal claim for reinstatement and compensation for time lost based on Article 11(a) of the Agreement, was presented to and denied by the Carrier. The claim is now before us.

Article 11(a) is as follows:

"ARTICLE 11. GRIEVANCES.

"(a) A dispatcher who feels that he has been dealt with in a manner inconsistent with the terms of this agreement, or otherwise unjustly treated, if unable to dispose of his complaint with his immediate superior, may secure a hearing by the Superintendent or his designated representative (who shall not be the dispatcher's immediate superior) by written request, stating his complaint or grievance.

"Hearing on such written complaint shall be within ten (10) days of the date of request and filing of written complaint.

"The dispatcher shall have the same right of representation and opportunity to present his case as provided for hearings in discipline matters, and the same right of appeal as provided in Article 10."

Article 10 is entitled "Discipline" and provides the usual safeguards affording the protection of due process to the accused, including the right of appeal within 15 days of the date of decision. Paragraph (e) of Article 10 provides restoration to duty and payment of net wage loss if the employe is cleared of charges against him.

The only issue we need decide here is whether this claim is properly before the Board on appeal. To determine the issue we must rule on the propriety of a claim based on the grievance rule of the applicable agreement after discipline has been properly assessed and accepted by Claimant, (not appealed from) under the discipline rule of that contract.

We are of the opinion and so find that failure of Claimant to appeal from the decision of dismissal within the time limitations of Article 10 bars the claim from consideration under the grievance procedure of the contract. The language of Articles 10 and 11 is clear and unambiguous in expressing the intent of the parties to provide two different and distinct methods of dealing with two different and distinct types of claims, grievances or complaints. Article 10 deals with matters of discipline, demotion or discharge; Article 11 provides a method of handling personal complaints or grievances initiated by the dispatcher and gives him the same opportunity to his "day in court" and his right to appeal as provided in Article 10. The argument that a decision rendered under Article 10 may be appealed under Article 11 is clearly untenable and without merit. Moreover, since no penalty attaches for violation of Article 11 in the form of compensation for time lost as is provided in Article 10, and since the claim is predicated on violation of Rule 11, it is obvious that this Board has no power or authority, even in a finding of "unjust treatment" to grant the relief prayed for. (See Award 1847, Referee Yeager.)

We find and hold that when Claimant failed to exercise his right of appeal under Article 10, he thereby forfeited his right to bring the claim before this Board and foreclosed consideration of that claim under any other provision of the Agreement. The express language of the contract here permits of no other interpretation.

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 Claim is barred.

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.