Award No. 8479
Docket No. DC-9475

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES, LOCAL 385

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employes Union Local 385 on the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company for and on behalf of Waiter H. L. Hill that he be restored to service with seniority and vacation rights unimpaired and that he be compensated for net wages lost from June 14, 1955 account Carrier's holding claimant out of service on said date and dismissing him thereafter on June 28, 1955 in violation of current agreement.

OPINION OF BOARD: Claimant was discharged from service of the Carrier on June 28, 1955. The decision was appealed on July 5, 1955, to Carrier's highest official designated to handle such appeals. He affirmed the decision of dismissal on July 18, 1955.

No further action was taken by the Petitioner here until February 5, 1957, at which time Petitioner filed notice of intent to file an ex parte submission with this Division.

There is only one question for us to decide in this case, i.e., which of the two agreements in evidence here is applicable to this appeal. The Petitioner contends that the appeal is governed by the terms of the Agreement of September 1, 1949, which contains no limitation on the time for filing appeals. On the other hand, the Respondent asserts that the Agreement of February 1, 1956, is controlling and that the appeal is barred by the 9-months limitation of that Contract. We agree with the Respondent in this instance.

The 1956 Agreement says (Rule 21)

> "This agreement shall be effective as of February 1, 1956 and **shall supersede and be substituted for all rules and existing agreements, practices and working conditions** * * *". (Emphasis supplied.)

Rule 8(g) provides in pertinent part:

> **"All claims or grievances involved in a decision by the highest designated officer shall be barred unless within nine (9) months from**

the date of said officer's decision proceedings are instituted by the employe or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the nine months' period herein referred to." (Emphasis added.)

The final decision on the property was July 18, 1955. When the applicable provision of the 1956 Agreement became effective on February 1, no further action had been taken by Petitioner. Consequently, under the new rule agreed upon by the parties, Petitioner had nine months from February 1, 1956 within which to take further steps in the appeal process, or until November 1, 1956. Instead Petitioner did not file notice of intent until February 5, 1957, some three months after the expiration of the time limit.

Petitioner contends that Rule 8(g) can have no "ex post facto" effect and that since the case arose under the prior Agreement of 1949, which set out no time limit, it is properly before the Board. The fallacy of this argument is that Rule 8(g) was not applied retroactively, in that the claim at the time the rule became effective was in the category of "All claims or grievances" **then** involved in a final decision by the highest designated officer on the property. The rule applied to **all** claims or grievances in that category without exception. (See First Division Award 15391, Referee O'Malley.)

In view of the foregoing, we find and hold that the Agreement of 1956 is controlling here and that this claim is dismissed for failure to comply with the requirements of Rule 8(g) thereof.

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 Employes involved in this dispute are respectively Carrier and Employes 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.