

Award No. 8501
Docket No. TD-8158

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carroll R. Daugherty, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY (Coast Lines)**

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

(1) The Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as "the Carrier" violated Article VII of the existing Agreement when it dismissed T. R. Jenkins from his regular position as trick train dispatcher in the Winslow, Arizona office, effective January 2, 1954, as a result of deficient and unsustained charges, which action was unjust, unreasonable, arbitrary and in abuse of the Carrier's discretion.

(2) T. R. Jenkins shall now be reinstated to the first trick train dispatcher position to which he was assigned January 1, 1954, with all rights under the Agreement unimpaired.

(3) Claimant T. R. Jenkins shall be compensated for all wage loss sustained as a result of Carrier's improper and unwarranted action.

OPINION OF BOARD: As of January 1, 1954, Claimant was dismissed from service by letter from Carrier's Superintendent Rogers, who found him guilty of violating Rules E and 211 of Carrier's Operating Rules and Rule 42 of Instructions for Train Dispatchers.

On January 28, 1954, Claimant appealed his dismissal to Superintendent Rogers, who declined the appeal on February 4, 1954. On February 18, 1954, General Chairman Brown, in a preliminary letter promising a detailed follow-up letter, appealed said decision to Assistant General Managers Baker and Skelton. On April 15, 1954, Brown supplemented his previous letter and ended by asking for a conference to discuss the claim. On April 28, Baker declined the claim and said he was willing to discuss the case at Los Angeles at Brown's convenience. Within the next few months Baker was succeeded by Stuppi and Brown by Buckingham. The last-named, on December 14, 1955, wrote to arrange the previously-mentioned conference, which finally came to

be held on January 31, 1955. Thereat Stuppi took the position that, under Section 4 of Article VII of the Parties' controlling agreement (which requires appeals to be filed within 30 days after date of decision of Carrier's next lower official), the claim now had no standing. The same position was taken by Carrier's next highest and highest officials upon appeal to them.

The first issue to be determined in this case is whether, as Carrier contends, the claim herein has no standing because the Organization failed to observe the requirements of Article VII, Section 4. If this question be answered affirmatively, there is no need to consider the merits of Carrier's dismissal of claimant.

General Chairman Brown's preliminary appeal letter of February 18, 1954, was well within 30 days from the appeal declination by Superintendent Rogers on February 4, 1954. Because Brown promised a follow-up letter and because Assistant Manager Baker made no reply of any kind prior to the latter's receipt of said follow-up letter (dated April 15, 1954), said follow-up must also be held to have been within the 30-day limit. Baker did reply on April 28, 1954, and his reply contained a declination of the claim, although stating his willingness to confer in Los Angeles at Brown's convenience. Then came the long wait till December 14, 1955, caused, according to the Organization, by illness in Brown's family and by the unavoidable delays in choosing and installing his successor.

The appeals issue boils down to this: Granted that Baker's letter of April 28, 1954, contained a declination of the claim, did his stated willingness to confer at Brown's convenience constitute a waiver by Carrier of the 30-day limit for appeals contained in Article VII, Section 4? Or did the conference still have to be held soon enough within 30 days from April 28 that, if unproductive for the Organization, the latter would have had time to file an appeal within said strict limit?

The record contains no evidence as to whether, by the words "at your convenience," Baker had in mind "any old time" or any time at Brown's convenience within 30 days from April 28, 1954. In themselves the words are ambiguous. And in the absence of evidential aid, the Board is unable, in fact should not presume, to interpret them.

Given this conclusion, the Board is compelled to apply the plain language of Article VII, Section 4. The Organization's appeal to the next officer above Baker was not timely under said language. This ruling is buttressed by the certainty that the Organization had time to address a formal appeal to said higher officer before the expiration of the 30 days. Then if the latter had refused to consider such appeal on the grounds that the Organization had not taken advantage of the proffered conference, the Organization would have been fully protected.

On these grounds the instant claim cannot be considered 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 Employee involved in this dispute are respectively Carrier and Employee 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 October, 1958.