Award No. 8715
Docket No. DC-10207

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 848

CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Union, Local 848, on the property of Chicago, Burlington and Quincy Railroad Company for and on behalf of Alfred Richardson, Chef, that he be reinstated in Carrier's employ with vacation and seniority rights unbroken and compensation for net wages lost since August 28, 1957, account Carrier's dismissal of claim—and in violation of agreement.

OPINION OF BOARD: The Claimant, a Chef in the Carrier's employ, was dismissed from service on August 28, 1957, for allegedly appropriating for his own use two pounds of Company owned butter. A hearing and investigation was held on September 24, 1957, pursuant to due notice, and Claimant attended and was represented at that hearing and had fair opportunity to present his case and to question the complaining witnesses.

The Carrier contends that this claim must be dismissed since (1) Petitioner failed to comply with the requirements of Rules 26 (b) and 25 (a) of the applicable Agreement and (2) the handling on the property did not include any request for compensation for time lost. The Carrier's second point is clearly untenable since Rule 26, which concerns the procedure to be followed in objecting to discipline or dismissal, specifically states that

> "* * * if it is found that an employe has been unjustly disciplined or dismissed from the service, he shall be reinstated with his seniority rights unimpaired, and be compensated for wage lost, if any, suffered by him resulting from said discipline or dismissal, less any amount earned during such period of suspension or dismissal."

This provision is complete, definite and controlling unless Claimant expressly waived its provisions which he did not do.

The Carrier's first point is based on Rule 26 (b's) requirement that the provisions of Rule 25 (a) and (b) shall be applicable

> "* * * in connection with appeals and time within which appeals shall be made in cases involving dismissal."

Rule 25 (a) prescribes that an employe who believes he has been unjustly dealt with or that any of the provisions of the Agreement have been violated, shall first present his complaint in writing to his crew supervisor within 10 days of the occurrence. The claim before us was never presented to the crew supervisor but instead was submitted within the 10 day period to Claimant's employing officer.

We believe and find that the claim was properly processed. Rule 26, by its very terms, is the Agreement provision relating to dismissals and it sets up regular machinery for the processing of claims based on dismissals. As part of that machinery, it requires that the Claimant will be granted an investigation if he makes request in writing therefor to his employing officer within 10 days of notice of dismissal. This the Claimant did.

Rule 26 then goes on to provide for investigation, and thereafter restoration of the rights to the employe whose claim is sustained. It next provides, in its paragraph (b) that paragraphs (a) and (b) of Rule 25 shall be applicable to "appeals" in cases involving dismissal. There is no doubt, in our opinion, that Petitioner duly complied with these requirements. As used in this context, the "appeals" referred to in Rule 26 (b) were appeals from the dismissal ruling after investigation under Rule 26 (a) had been held. That is the plain intent of Rule 26 (a) and (b) when read together and while we will enforce procedural requirements where their meaning is reaonably apparent (see Award 8564), we are not disposed to read into them complex and overtechnical requirements and word interpretations that are confusing to experts, let alone employes seeking to present claims. A contrary result would frustrate the very purpose of the Agreement grievance machinery.

We turn now to the merits of the case. Pilfering and theft are, of course, matters of serious concern and we are satisfied that in the present case, the evidence submitted is sufficient to support the charges. Claimant's possession of the butter as he was leaving the train and the fact that the butter was of the same pattern and type used by the Carrier in its Commissary but not ordinarily available to the general public are more than merely suspicious circumstances. Claimant's manifestly inadequate and inconsistent explanations of how he obtained the butter are particularly compelling circumstances in that regard and remove any possibility of his claim's success. The Carrier may wish to review the punishment because of Claimant's employment record, length of service and other considerations. However, that is solely within the Carrier's discretion and we will not seek to substitute our judgment for its decision as to what disciplinary action should be adopted in the present case since we do not consider it arbitrary or capricious.

The claim is accordingly denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived hearing on this dispute; and

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 there has been no violation of the Agreement or arbitrary abuse of the Carrier's disciplinary authority.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 4th day of February, 1959.

SPECIAL CONCURRING OPINION, AWARD NO. 8715, DOCKET NO. DC-10207

The findings and award are to the effect "That there has been no violation of the Agreement or arbitrary abuse of the Carrier's disciplinary authority" and "Claim denied". With these we concur.

However, we would not have read complex and overtechnical requirements into the provision which appears in Rule 26 (b) if we had applied it as merely singling out appeals in cases involving dismissal from among appeals in other discipline cases which do not involve dismissal and had taken cognizance of the fact that the provisions of paragraphs (a) and (b) of Rule 25 are expressly applicable thereto. That requirement in Rule 26 is clear and unambiguous. Rule 25 applies to claims and grievances and is equally clear and unambiguous.

It is not within the power of this Board to change the Agreement between the parties joined here; consequently, our Award cannot have the effect of removing from Rule 26 of the Agreement the requirement that paragraphs (a) and (b) of Rule 25 be applied in appeals in cases involving "dismissal".

/s/ J. F. Mullen

/s/ R. M. Butler

/s/ W. H. Castle

/s/ C. P. Dugan

/s/ J. E. Kemp