

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**ILLINOIS TERMINAL RAILROAD COMPANY**

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

(1) The Carrier violated the effective Agreement when, effective November 1, 1956, it dismissed Section Foreman Olen Surber without just and sufficient cause and on the basis of unproven charges;

(2) Section Foreman Olen Surber be reinstated with seniority, vacation and all other rights unimpaired and be reimbursed for all monetary loss suffered since he was removed from service.

**OPINION OF BOARD:** This is a claim involving the discharge from service of an employe, following charges of falsifying records, and for negligence of duty.

Before considering the merits of the case before us, we are required to first determine if this cause has been properly progressed to this Board, and whether the Board has jurisdiction over the parties and subject matter.

Carrier contends the employe, and it is not denied, was discharged from service as of November 1, 1956. Following investigation and hearing of the charges held by Carrier on October 19, 1956, and its notice of discharge from service to the employe, nothing further occurred in the progression of this claim until January 8, 1957, some seventy days following the date of discharge, when an appeal was made by the General Chairman to the Superintendent for Carrier. Rather, the Organization contends that Carrier, by raising the question of time limit to file appeal, such constitutes new matter not previously raised and is improper.

Carrier relies on the provisions of the National Agreement of August 21, 1954, Article V, Section 1 (b), to support its position that the claim has not been properly progressed on the property, and that as a result this Board has no authority to consider the merits of the claim before us.

The contention that this question is new matter raised by Carrier is erroneous. The agreement of August 21, 1954, is as much a part of the record before us as the Schedule Rules. It is an elementary principle of law also, that the question of jurisdiction can always be raised at any time in the proceedings. Such contention by the Organization is erroneous.

This claim is not properly before the Board due to failure of the Organization to comply with the National Agreement of August 21, 1954, in that proper appeal was not lodged within sixty days as required in Article V, Section 1 (b). The Board is without jurisdiction to make an award.

**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 Employee involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934; and

That the Board has no jurisdiction to consider the claim before us on its merits, and it should be dismissed.

#### AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 20th day of July, 1959.