

Award No. 9321

Docket No. CL-11321

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

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

(a) Carrier violated rules of the parties' agreement in removing W. E. Doyle from the position of Voucher and Bill Clerk in the Assistant Comptroller's office at Minneapolis on March 14, 1958.

(b) Mr. Doyle be reinstated with restoration of all his employment rights and reimbursed for all time lost.

EMPLOYEES' STATEMENT OF FACTS: On March 5, 1958 W. E. Doyle was notified to report for formal investigation at 9:00 A. M. March 7, 1958.

Investigation was held on March 7, 1958.

As a result of the investigation Mr. W. E. Doyle was removed from his position.

POSITION OF EMPLOYEES: There is in evidence an agreement dated February 1, 1955 which contains Rule 25--Investigations, and Rule 28--Investigations and Hearings, where and when held.

Rule 25 in paragraph one reads as follows:

"An employe who has been in the service more than sixty (60) days or whose application has been formally approved shall not be disciplined or dismissed without investigation. He may however, be held out of service pending such investigation. He shall be immediately apprized in writing of the precise charge against him." (Emphasis ours.)

It is the employees' position that the general language of the letter of notification dated March 5, 1958 (Employees' Exhibit "A") does not constitute a precise charge, but is in general a charge which covers many phases of

tential monetary loss to the Carrier, averaging as much as \$18.00 per day in a four day period.

6. Mr. Doyle's failure and inability to qualify for this position, as provided in Rule 15 of the current schedule, were clearly and definitely established in the 12 to 14 days he spent on the position and in the formal investigation which was held.
7. Although not required by Rules 8, 15 and 16, Mr. Doyle was offered the benefit of a fair and impartial investigation in accordance with Rules 25, 26, 27, 28 and 29 of the current agreement and of Letter Understanding dated May 22, 1957, Carrier's Exhibit "D".
8. The action taken by the Carrier in dis-qualifying Mr. Doyle was in no way unfair, improper, arbitrary or capricious, but was fully justified in the circumstances.

CONCLUSION

Carrier respectfully requests denial or dismissal of this case because of failure of Employees to comply with the provisions of Article V of the National Agreement of August 21, 1954 "time limit on claims and grievances rule".

In the event this request is not granted, Carrier submits that it has conclusively shown by abundant evidence that the claim is without merit and is not supported by any provisions of agreement, and respectfully requests an award denying the claim of the Employees for restoration to the position of Voucher and Bill Clerk for which he was disqualified and for payment for all time lost.

Carrier affirmatively asserts that all material in support of its position has been presented to Employees and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The record discloses that this claim was progressed to the highest officer on the property designated to handle claims and grievances, and was denied by him in writing on September 2, 1958. It was not appealed to this Board until July 6, 1959, over ten months later, which was not within the time required by Section 1 (c) of Article V of the National Agreement of August 21, 1954, to which the Brotherhood and Carrier are parties. That section provides that all claims and grievances are barred unless proceedings are instituted here within nine months after final denial on the property. Consequently this Board cannot consider it on the merits.

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

That the parties to this dispute waived oral hearing;

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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of March, 1960.