

Award No. 11622

Docket No. MS-13557

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

U. C. WAIGAND

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Request that U. C. Waigand be reinstated to his position with Missouri Pacific Railroad Company and that he be awarded his back pay from the date of his discharge in December of 1959 to the present.

OPINION OF BOARD: Carrier contends Claimant, employe Waigand, was barred for failure to file within the prescribed time by provisions of Rule 26(i-3), Agreement effective February 1, 1955, which provides in essence:

"All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 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 9 months' period herein referred to."

The record discloses that employe signalman did file within the 9 month period a document allegedly purporting to be a notice and submission, although informal, to the proper Division of the Board. The document was returned by the Division to the Claimant, and much later, after an inquiry by further correspondence, Claimant did file an intent and submission. We hold that the later filing of intent and submission relates back to the initial filing date and is within conformity of Rule 26(i-3).

The cited Awards, 8474, 9378, 10460 and others, are clearly distinguishable from the facts in the instant case. There was no showing in any of the prior Awards that an initial filing was made within the proper time to the proper Division of the Board. In view of compliance, the claim is not barred.

The pertinent disciplinary facts show that Claimant's superior, the Signal Supervisor, directed employe to rearrange a circuit within a switch circuit controller so that certain contacts would be connected in multiple. Employe refused the order in the belief that it was not safe nor was it within his

province to change the basic plan. The employe requested his supervisor to give him written instructions, which the supervisor refused to do. The action of the employe was a disobedience, although the employe's motives may have been in good faith. The employe was not personally in danger and it was beyond his scope to exercise his own discretion in refusing to carry out his superior's order. He should have complied with the instructions and then sought redress at a later date.

The Board is of the opinion that the degree of insubordination under the facts and circumstances is not sufficiently flagrant and willful to warrant the extreme punishment of severance from employment.

Accordingly, the claim for restoration to service, with seniority unimpaired must be allowed.

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

That the parties 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 Agreement was violated to extent indicated in the Opinion.

AWARD

The claim is sustained as to reinstatement with seniority unimpaired but overruled with respect to all back pay for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of July 1963.