

Award No. 12001
Docket No. CL-14026

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

**THE NEW YORK CENTRAL RAILROAD COMPANY
(Grand Central Terminal)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5296) that:

1 — Carrier violated the Clerks' Agreement and the agreed-upon practice in the Baggage Department, Grand Central Terminal, when it improperly and unjustly dismissed John A. Culley from the service of the Carrier for alleged violation of Rule 5509, and failed to notify him of its decision within the time limits prescribed in Rule 22 of the Agreement.

2 — John A. Culley shall now be restored to the service of the Carrier with seniority and all other rights unimpaired and his record cleared.

3 — Carrier be required to reimburse John A. Culley for all time lost since January 14, 1962 as a result of the violation of the Agreement.

OPINION OF BOARD: On January 23, 1962, Claimant was dismissed from service because he violated Rule 5509 and refused to obey the orders of his Foreman. Thereafter, on January 27, 1962, Petitioner wrote Carrier that it desires to "appeal this assessed discipline." On January 31, 1962, Petitioner again wrote Carrier, in part, as follows:

"Whereas, the provisions of Rule 22 paragraph b, have been violated it is requested that employe Culley be restored to service, seniority unimpaired and that he be compensated for all lost time."

Again, on February 2nd, 1962, Petitioner wrote Carrier, in part, as follows:

"Kindly refer to my letter dated January 31st, 1962, in which a request for the return to service of employe Culley has been made, due to the violation of Rule 22 paragraph b."

Carrier declined the claim. On appeal to Carrier's Terminal Manager under date of February 7, 1962, Petitioner wrote, in part, as follows:

"Whereas, Rule 22 paragraph b, of the Agreement between the New York Central Railroad Company, Grand Central Terminal and The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, has been violated, 'A decision will be rendered within seven (7) days after completion of hearing.'"

Again on February 16, 1962 Petitioner wrote to Carrier requesting that Claimant be reinstated with compensation for all lost time because Carrier violated Rule 22(b). Carrier replied on February 21, 1962 that "Carrier's decision was made within seven (7) days from the date of hearing in compliance with Rule 22(b) of your agreement." A conference was held on March 7, 1962 at which time Petitioner again urged that Carrier violated Rule 22 of the Agreement. In a letter dated March 27, 1962, Carrier reviewed the history of the investigation and the decision of dismissal and concluded as follows:

"It is our position that the carrier complied with all the provisions of Rule 22. A decision was rendered within 7 days of the date of hearing. Telegrams containing the decision were dispatched on the 6th day following the hearing and were delivered to claimants' residences on both the 6th and 7th day following the hearings. In addition, the Western Union Company attempted to reach claimants by telephone on both of these dates. The carrier fulfilled all of the requirements of Rule 22. Accordingly, your claim for reinstatement of Messrs. Culley and Thompson and payment for all time lost is denied."

At no time, on the property, did Petitioner contend that Carrier acted improperly in dismissing Claimant from service because the facts in the case did not justify such discipline. It only contended that Claimant should be reinstated with compensation for lost time because Carrier violated procedural Rule 22. At the final conference held on November 7, 1962, Petitioner made a verbal plea for leniency.

Notwithstanding the uncontested record of the handling on the property of this claim on the basis of an alleged violation of Rule 22, Petitioner filed this claim with this Board alleging that "Carrier violated the Clerks' Agreement and the agreed-upon practice in the Baggage Department, Grand Central Terminal, when it improperly and unjustly dismissed John A. Culley from the service of the Carrier for alleged violation of Rule 5509, and failed to notify him of its decision within the limits prescribed in Rule 22 of the Agreement." Unquestionably, the claim presented to the Board is not the same as the one handled on the property.

The question of agreed upon practice in the Baggage Department and the alleged violation of Rule 5509 is not properly before the Board. Petitioner has failed to comply with Section 3, First (i) of the Railway Labor Act, as amended. We may not rule on the merits of the dismissal from service. Likewise, an oral plea for leniency made on the property and denied by the Carrier may not be considered or reviewed by the Board. We have consistently held that such a plea is strictly a prerogative of management. Awards 11914 (Coburn), 11651 (Webster), 10789 (Ray) and others. Even though we may not agree with the Carrier's decision, we may not here review a leniency plea.

The sole question is whether Carrier violated Rule 22. We hold that Carrier complied with that Rule. Although Claimant received notice of the scheduled hearing about two hours before it was scheduled to begin, neither he nor his representatives protested or asked for an adjournment. Admittedly, two hours may not be a reasonable time. Had Claimant or his representatives requested an adjournment to another date, the Hearing Officer would have been obliged to grant it. Having made no such request, we are obliged to assume that the Claimant was given reasonable notice.

Petitioner urges that the decision was not rendered within seven days after the hearing was completed as required by paragraph (b) of Rule 22. The investigation was completed on January 17, 1962. On January 23, 1962 Carrier rendered a decision and notified Claimant by two Western Union telegrams. A Western Union messenger was unable to deliver them either on January 23 or on January 24 because there was no one at home. The record conclusively shows that two telegrams, both dated January 23, 1962, were sent to Claimant's home. Rule 22(b) requires that the decision be "rendered" within seven days not "received" by Claimant within the seven days. Carrier fully complied with the requirements of Rule 22(b).

Petitioner also argues that Rule 22 was violated because the investigation was conducted by the Assistant Station Master-Baggage Agent, McAvoy and the decision was rendered by the General Station Master-Baggage Agent, Quinn. In Award 8310 (Cluster) we held that the mere fact that the dismissal notice was signed by the Superintendent instead of the Hearing Officer does not alone support the conclusion that the Superintendent rather than the Hearing Officer made the initial decision. The same applies to the situation here. The mere fact that the dismissal notice is signed by Quinn does not alone support the conclusion that Quinn rather than McAvoy made the initial determination. Awards 8020 (Bailer) and 7088 (Whiting) are clearly distinguishable. In any event, we affirm the principle and findings in Award 8310.

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 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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1963.