



Award No. 15983

Docket No. MW-16776

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when it dismissed Section Foreman Alvin Heard on November 24, 1965, without benefit of hearing as required under the provisions of Rule 17.

(2) The dismissal of Section Foreman Alvin Heard was without just and sufficient cause and on the basis of unproven and unsupported charges.

(3) The dismissal of Section Foreman Alvin Heard was based on charges other than those set forth in a notice dated November 12, 1965 which was delivered to and received by the Claimant on the evening of November 15, 1965.

(4) Because of each or any of the aforesaid violations, the Carrier shall be required to reinstate Mr. Alvin Heard; the record be cleared of the charges placed against him; he be compensated for wage loss suffered, all in compliance with the provisions of Rule 19 of the Agreement. (System Case No. PR-D-189918/1-D-232)

OPINION OF BOARD: This is a disciplinary case involving the dismissal of the Claimant from the employ of the Carrier. An investigation and/or hearing was held by the appropriate officer of the Carrier, as a result of which the Claimant was given a written notice of dismissal.

Petitioner, on behalf of Claimant, alleges a violation of Rule 17(a) of the Agreement, fundamentally because it contends that Claimant was dismissed without a fair hearing.

Rule 17 (a) provides:

"RULE 17.

DISCIPLINE AND GRIEVANCES

(a) An employe who has been in the service ninety (90) days will not be disciplined without a fair hearing, at which hearing he may be represented by one or more representatives of his own

choice. He may, however, be suspended pending such hearing which will be held within a period of twenty (20) days from date when charged with the offense, or suspended from service. A decision will be rendered within ten (10) days after the completion of the hearing."

The Carrier defends on the basis that its decision was not appealed within the time limit specified by Rule 17 (b) of the Agreement (30 days) as amended by the Agreement of August 21, 1954 (60 days). We agree with the Carrier since the record of this case is quite clear on this point. An appeal was not filed until almost four months after the written notice of dismissal. This was too late. Carrier raised this point on the property, but it remained unanswered both on the property as well as in the original submission to this Board. Petitioner did come forward with the counter defense in its rebuttal statement, based on Section 3 of Article V of the August 21, 1954 Agreement, to the effect that this action of the Carrier constituted "a continuing violation", and hence could be appealed at any time. This was not raised on the property by the Petitioner and cannot, consequently, be considered by this Board. There are numerous awards to this effect and we support the reasoning and decisions contained therein. Because of our dismissing this claim on procedural grounds, we need not go to the substantive merits involved. We will dismiss the Claim.

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 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 30th day of November 1967.