



Award No. 16014
Docket No. CL-16737

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6194) that:

1. Carrier's action in holding employee Ella Brown out of service prior to the date set for the investigation and then dismissing this employee from service without proving its charges of an unexcused absence from duty resulting in her failure to properly and fully protect her assignment was unjust, unreasonable, arbitrary, and capricious.

2. Carrier shall now be required to clear the record of the charges made against employee Ella Brown and reinstate her on Stenographer Position 678 in District 86 with all rights unimpaired, and compensate her for all losses sustained until she is returned to service.

OPINION OF BOARD: The Claimant in this case failed to report for duty on October 22, 1965. On that same date, she was notified by the Carrier that an investigation of this matter would be held on October 28, 1965 and that in the meantime she was being withheld from service pending the investigation. At her request, the Investigating Officer granted her a continuance to November 4, 1965, and the hearing was conducted on that day. On November 10, 1965, she was officially notified that as a result of the aforesaid investigation, she was being dismissed from the service of the Carrier. The subject claim on behalf of the Claimant was submitted to the appropriate officer of the Carrier by letter dated January 19, 1966.

Petitioner contends that the Carrier by its action in holding the Claimant out of service prior to the investigation, and its subsequent dismissal of her "was unjust, unreasonable, arbitrary, and capricious."

Carrier avers that inasmuch as the Organization's claim reads that she be reinstated and compensated for all losses sustained, that is, from the date she was withheld from service, October 22, 1965, the date of the occurrence on which the claim is based, this Board is barred from considering

this case on its merits, since the official claim of the Claimant was not filed with the Carrier until January 19, 1966, clearly in excess of sixty days from October 22.

We agree with the contentions of the Carrier on this point. This case falls within the provisions of Article V of the August 21, 1954 Agreement, to which both parties were signatories. Section 1 (a) of that Agreement reads:

"(a) All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

The above language is clear, precise, and unambiguous. The instant claim was not presented to the Carrier within the sixty day time limit; hence, we must accordingly dismiss it for lack of jurisdiction. (Awards 8886-McMahon, 12490-Ives, inter alia.)

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 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 15th day of December 1967.

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