

Award No. 18149
Docket No. MS-18744

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

FREDERICK CAMP

CHICAGO AND WESTERN INDIANA RAILROAD COMPANY

STATEMENT OF CLAIM:

1. That petitioner was denied the equal protection of the law guaranteed by the 14th Amendment to the Constitution of the United States by action of respondent in discharging petitioner from all services with respondent on November 25, 1969.

2. That an "investigation" by respondent on November 18, 1969, concerning certain activities of petitioner should be set aside and declared null and void for the reasons that petitioner's appearance at said "investigation," his testimony and his failure to have a representative present were not free and voluntary acts, due to certain representations made to him prior to said investigation by a ranking official of respondent.

Briefly, this dispute involves an investigation conducted by respondent on November 18, 1968, into an alleged violation by petitioner of respondent's rule "G" by which the use of intoxicants by employees subject to duty, or their possession or use while on duty or on company property is prohibited. Because of certain representations made by one E. P. Henry, chief dispatcher and rules examiner for respondent, prior to said investigation petitioner's appearance, testimony and failure to have a representative present at said investigation were all the product of involuntary and coerced acts on his part.

Further, the investigation resulted in petitioner being discharged from all services with respondent on November 25, 1969, for an alleged violation of rule "G". It is submitted that all other initial violations in the past of rule "G" by employees of respondent were met with mere suspension, rather than an outright discharge, including upon information and belief, violations of said rule by at least one high ranking official of respondent. Petitioner's claim, therefore, is that he was denied equal protection under respondent's own rule and equal protection of the law as guaranteed by the constitution.

OPINION OF BOARD: The record in this case reveals that Claimant was given a formal investigation on November 18, 1969, and as a result of such investigation was dismissed from service effective November 25, 1969.

The record also discloses that this claim was never handled on the property per the provisions of rule 11(d), Time Limit on Appeals of Claims. Accordingly, this claim per Section 3, First (i) of the Railway Labor Act and our Circular No. 1, dated October 10, 1934, is improperly before this Board, and is hereby dismissed. See Awards 10794, 17624 and 17668.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

The claim is barred from consideration.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of October 1970.