

Award No. 18335

Docket No. DC-18621

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES LOCAL 385

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

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 385 on the property of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, for and on behalf of waiter C. W. Porter that he be compensated for net wage loss for sixty (60) days account of Carrier suspending Claimant from service in violation of the Agreement and in abuse of its discretion.

OPINION OF BOARD: In this discipline case, the Organization raises a procedural defect, claiming that Carrier violated the provisions of Rule 8 (b) of the Agreement, which provides as follows:

"(b) If an appeal is taken, it will be filed with the next higher official within ten (10) days from the date of decision and copy furnished the official whose decision is appealed. The officer appealed to shall render a decision within five (5) days after the date of the appeal hearing."

In its ex parte submission, Carrier raises for the first time a defense that the appeal made to Carrier's Vice President-Labor Relations, L. W. Harrington, was not properly made in accordance with the provisions of Rule 8 (b) of the Agreement in that Carrier's Superintendent, W. R. Jones, whose decision was appealed in this case, did not receive a copy of the appeal filed with Mr. Harrington. However, this contention was not raised on the property and cannot now be considered by the Board in the determination of this dispute, as is also true in regard to Carrier's contention, not raised on the property, that the claim for payment of wages was not filed in accordance with Rule 8 (g) of the Agreement because not submitted within 60 days from the originating date.

The record clearly discloses that Carrier failed to comply with the mandatory requirements of Rule 8 (b) of the Agreement in that the officer appealed to did not render a decision within five (5) days after the date of the appeal hearing, and therefore we will sustain 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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December 1970.