

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19579
Docket Number DC-19755

Gene T. Ritter, Referee

(Joint Council of Dining Car Employees
(Local 516
PARTIES TO DISPUTE: (
(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the Joint Council of Dining Car Employees, Local 516 on the property of the Burlington Northern, Inc. for and on behalf of Mr. MICHAEL A. NELSON, Chef, who was dismissed from Carrier's service on January 26, 1971 as a result of an investigation held on January 14, 1971. Carrier shall now restore Mr. Michael A. Nelson to service with all rights restored and compensated for all time lost.

OPINION OF BOARD: On January 2, 1971, Claimant was employed as a chef on Dining Car No. 1150 of the Carrier's West bound Train No. 25, the North Coast Limited. At approximately 6:00 o'clock P.M., on January 2, 1971, the serving of a tour group on the involved train was completed and the serving of the regular passengers on this train began. Shortly after serving the regular passengers, complaints were received by the waiters from the diners that some chicken was brown on the outside, but raw on the inside; and that some beef, pork and hamburgers had to be returned because of poor preparation. The Steward made an investigation and, in the opinion of the Steward, Claimant was in no condition to properly prepare the food and that at 8:00 o'clock on January 2, 1971, the decision to close the dining car was made by the Steward. On January 3, 1971, the Steward reported his action to the Director of Dining Car Department by wire and on January 8, 1971, Claimant was notified as follows:

"Arrange to appear at the office of the Director, Dining and Sleeping Car Department, Room 100, St. Paul Union Depot, St. Paul, Minnesota at 10:00 a.m., Thursday, January 14, 1971 for formal investigation to determine the cause, establish the facts, and place the responsibility, if any, for refusing food service and closing Dining Car at 8:00 p.m. on January 2, 1971, Train #25.

"You may arrange to have representatives and/or witnesses present according to governing schedule rules.

J. W. Kirby"

A formal investigation was held on January 14, 1971, and as a result of the investigation, Claimant was notified on January 26, 1971, that he (Claimant) was dismissed from service. This claim was progressed on the property through the highest officer who, on May 7, 1971, declined this payment. Carrier takes the position that this denial letter of May 7, 1971, concluded the handling on the property. The Organization contends that the General Chairman, in his letter of March 31, 1971, appealing the decision to Carrier's highest designated officer stated that if Carrier was not agreeable to reinstating the Claimant, a time, date and place should be arranged for conference on this appeal. The initial conference was held on June 25, 1971 and in a letter dated June 28, 1971, Carrier stated that the previous declination was reaffirmed. A further conference was held on July 16, 1971, and on July 21, 1971, Carrier's highest designated officer again denied the appeal. Carrier contends that this appeal to this Board was not filed within nine months from the date of the decision of Carrier's highest designated appeal officer, and should, therefore, be dismissed. In this connection, Carrier contends that the date of decision by Carrier's highest designated appeal officer was May 7, 1971.

Under authority of Awards 17977 (Dorsey), 13942 (Dorsey), 12899 (Hall), 19021 (Hayes), 10460 (Ables), and many others, this claim must be dismissed. In essence, these cited Awards hold that where a precise time limit exists, it must be complied with unless there is an express agreement entered into between the parties extending or waiving the time limit; and that a request for further discussion and/or a further discussion after declination of a claim by the highest officer on the property, does not extend time within which an appeal may be taken to this Board.

The doctrine of stare decisis compels this Board to follow the cited Awards, which are found not to be in palpable error.

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 be dismissed.

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Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. G. Killen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1973.