NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20954
Docket Number CLX-20809

Louis Norris, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(REA Express, Inc.

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7626) that:

(1) The Agreement governing hours of service and working conditions between the parties, effective January 1, 1967, was violated at Newark, N.J. on Wednesday, February 7, 1973 when E. M. Green was dismissed from service in a manner violative of the rights granted him under said Agreement.

(2) He shall now be restored to service with seniority and other rights unimpaired and compensated in full for all salary and/or other monetary loss sustained retroactive to and including February 8, 1973.

OPINION OF BOARD: Claimant was employed by Carrier as an over-the-road truck driver, with seniority date of January 25, 1972. On September 22, 1972 Claimant was dispatched from Newark, New Jersey, to Nashville, Tennessee, for the purpose of transferring certain equipment. It was during this trip that the alleged offense occurred. On October 4, 1972 Claimant was cited for investigation for "submitting falsified receipts for reimbursement of expenses" alleged to have been incurred on this trip. After several postponements by mutual agreement, the formal investigation was finally held on February 1, 1973. He was found guilty as charged and and dismissed from service on February 7, 1973. On March 14, 1973 the General Chairman appealed this decision to the System Manager, who sustained the dismissal.

Petitioner asserts that such dismissal violated the Agreement between the parties, and demands that Claimant be restored to service with rights unimpaired, plus retroactive monetary loss. Petitioner emphasizes "that this case is not being appealed on the merits" but on the "disparaging manner" in which the investigation was held, negating Claimant's right to a fair and impartial hearing.

At the outset, Carrier raises the objection that since the appeal was not made within the time limit of 30 days provided for in Rule 11 (b), and since the time limit was not waived, this claim should be dismissed. The pertinent language of Rule 11(b) reads: "Appeals will be registered within thirty (30) days after decision is given - - - - -". The record indicates that Claimant was dismissed on February 7, 1973, and that the appeal

therefrom was filed on March 14, 1973. Obviously, the filing of the appeal exceeded the 30 day period required under Rule 11(b).

Petitioner counters by citing the principle that, whereas this issue was not raised on the property, it constitutes new matter and cannot now be considered by the Board as part of the appellate process. It is well settled that time limit issues not raised by the parties prior to the filing of Notice of Intent with this Board may not be raised by either party in their submissions to the Board.

As to the merits of the dispute, Petitioner's major contention is that an adjournment of the investigation should have been granted to allow additional time to present the testimony of a necessary witness. However, Rule 11(c) of the Agreement provides that "Employes shall have reasonable opportunity to secure the presence of representatives and necessary witnesses." The record shows that Claimant was afforded ample "reasonable opportunity" for such purpose. The burden then was his to notify his witnesses and "secure their presence" at the hearing. He cannot shift this burden to the Carrier. See Award No. 17525 (Dugan) on the proposition that "Carrier was under no duty to call witnesses" in behalf of Claimant.

Petitioner raises the further objection that the "disparaging manner in which the investigation was held" denied Claimant "a fair and impartial hearing". Careful review of the entire record, particularly the testimony adduced at the investigation, fails to persuade us that this contention has merit.

There is no sound basis for disturbing the action of the Carrier.

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 Agreement was not violated.

A W A R D

Claim denied

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 13th day of February 1976.