

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21618
Docket Number CL-21399

David C. Randles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks
(Freight Handlers, Express and Station Employes
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7953) that:

(a) Carrier violated the rules of the current Clerks' Agreement at Fort Madison, Iowa, on Wednesday, March 27, 1974, when it wrongfully discharged Mr. Earl J. Brammer from service; and,

(b) Carrier shall now restore Mr. Earl J. Brammer back to active service with all his seniority rights and other rights accruing thereto unimpaired; and,

(c) Carrier shall now pay Mr. Earl J. Brammer eight (8) hours at pro rata rate of his former position, Agent Train Order Clerk Position Number 6132, Plattsburg, Missouri, \$41.6390 per day, for Wednesday, March 27, 1974, and for each work day thereafter until he is properly restored to active service and violation is corrected.

OPINION OF BOARD: Claimant Earl J. Brammer was regularly assigned to the position of Agent Train Order Clerk at Plattsburg, Missouri. Following an investigation which was held on March 8, 1974, the Carrier informed the claimant that he would be dismissed from service at the close of work, Tuesday, March 26, 1974. Subsequently, the General Manager of the Carrier having received the transcript of record and review of the claimant's record, transmitted to the Organization the following determination by letter dated July 31, 1974: "...it is our opinion the period of time he has been out of service is sufficient discipline and, therefore, we are authorizing Superintendent, who receives copy of this letter, to reinstate him with seniority and vacation rights unimpaired, but without pay for the time he has been out of service."

The Organization's claim is relative to payment for lost wages from the date claimant was dismissed until the time he was restored to service. The claim is based upon a violation of Rule 47-A.

"47-A. All claims or grievances shall be handled as follows;

(1) 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."

Claimant complied with the mandatory requirements of Rule 47-A; however, the dispute arises over the fact that the Carrier officer authorized to receive the claim did not advise as the rule requires, "in writing of the reasons for such disallowance." The Carrier officer replied as follows:

"Referring to your letter of May 22, 1974, file 74-M-184, requesting reinstatement of Agent Earl J. Brammer with all seniority rights and other rights accruing thereto unimpaired and pay for time lost. Your request for reinstatement as mentioned above is respectfully declined."

The denial of the claim by the Carrier does not advance any reason whatsoever for disallowing the claim. The language of Rule 47-A is clear, unambiguous and mandatory; it does not stipulate any exceptions whatsoever. It is clear that the Carrier did not meet its obligation pursuant to Rule 47-A.

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 violated.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1977.