

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22405
Docket Number MS-22414

Abraham Weiss, Referee

PARTIES TO DISPUTE: (Herbert Murray
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(Consolidated Rail Corporation

STATEMENT OF CLAIM: "This is to serve notice, as required by the rules of the National Railroad Adjustment Board of my intention to file an exparte submission on or before January 6, 1978 covering an unadjusted dispute between me and Conrail Corporation involving the question:

'The claim made and stated here is that I have been unjustly illegally and discriminatorily discharged and that my civil rights have been violated' and request that I be reinstated to my job with full back pay and all other incurred benefits."

OPINION OF BOARD: Claimant was dismissed from Carrier's service on June 30, 1977, following an investigation concerning charges contained in a notice dated June 6, 1977, as follows:

"Misuse of company credit card, by purchasing gas for his personal vehicle on June 3, 1977."

Claimant was present at the formal investigation of the charges and was represented by a duly accredited representative of the craft. As is customary in such proceedings, Claimant was asked at the conclusion of the investigation:

"...have you any comments or criticisms of the way this trial has been conducted."

Claimant's response was "No."

The Carrier offers several defenses to the claim; however, in view of the Board's consideration of one of those defenses, it will be unnecessary to consider all of them.

The Carrier's defense to which we refer is that the claim submitted to the Board was not handled in the usual manner on the property, as required by Section 3, First (i) of the Railway Labor Act and Circular No. 1 of this Board.

Claimant was dismissed from Carrier's service after he was found guilty of misusing a company credit card. A claim, identified as System Docket 340, was progressed by the General Chairman, Maintenance of Way Employees, to Carrier's highest appeals officer where it was declined. That claim is not before us now.

The claim before us first came to Carrier's attention when it received a letter from the Board's Executive Secretary which contained the following statement by the Claimant:

"The claim made and stated here is that I have been unjustly illegally and discriminatorily discharged and that my civil rights have been violated" and request that I be reinstated to my job with full back pay and all other incurred [sic] benefits.

Although this statement of the claim by the Claimant is predicated on the same incidents and resultant discharge, it advances a new theory of violation, including the alleged deprivation of his civil rights, not previously submitted to the Carrier in progressing the claim and in conference on the property. Consequently, Carrier had no opportunity to consider the newly formulated claim and respond to it. (Claimant, in addition, alleged inept and inadequate representation.)

The opportunity to adjust grievances on the property is central to the purposes of the Railway Labor Act, and is, in fact, prescribed by that Act. When that opportunity has not been presented, as in the instant case, this Board has no alternative but to order a dismissal of the claim.

What we have stated above does not affect the disposition of System Docket 340, should it reach a Board for adjudication.

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

That the claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 16th day of May 1979.