NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23500
THIRD DIVISION Docket Number CL-23301

Josef P. Sirefman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Louisville and Nashville Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9012) that:

1. Carrier acted in an arbitrary, capricious and unjust manner and violated the Agreement between the parties when it dismissed Clerk-Operator J. L. Hart from the service of the Company effective July 5, 1979.

2. In view of the foregoing arbitrary, capricious and unjust action of the Carrier, it shall now be required to:

(a) Restore Clerk-Operator J. L. Hart to service of the Carrier immediately.

(b) Pay Mr. Hart for all time lost commencing with July 5, 1979, and continuing until he is restored to service.

(c) Pay Mr. Hart any amount he incurred for medical or surgical expense for himself or dependents to the extent that such payments would have been paid by Travelers Insurance Company under said policy. In addition, reimburse him for premium payments he may have made in the purchase of substitute health, welfare and life insurance.

(d) Pay Mr. Hart interest at the statutory rate for the State of Alabama for any amounts due under (b) hereof.

OPINION OF BOARD: Claimant J. L. Hart, a Clerk-Operator, was charged in an October 19, 1978 letter as follows:

"You are charged with cashing or causing to be cashed at First National Bank, Brewton, Alabama, on September 29, 1978, L&N Pay Draft No. 710230 payable to you and covering your first period September, 1978 earnings, which had been altered from $35.29 to $835.29 after issuance of the draft by this Company."

After a number of postponements the hearing was held on June 18, 1979 and Claimant was dismissed on July 5, 1979.

The pertinent portion of Rule 43 (a) provides that:

"Employees who have been in service more than 60 days will not be demerited, disciplined, or discharged without just cause. When such act becomes necessary, the accused shall be duly apprised in writing within ten days after knowledge of the occurrence of the charge that is brought against him, and within ten days after such notification, the employee shall be given a fair and impartial hearing or investigation by the proper officer of the railroad, at which time all evidence in the case shall be submitted."

On October 4, 1978 the Carrier's Paymaster wrote to the Director of Special Services that the pay draft in question "appears to have been altered to read $835.29 and bears the endorsement of J. L. Hart on the back". The local Special Services officer was notified by written instruction from the Director on October 9, 1978 to investigate. After interviewing bank personnel, Claimant, and the keeper of payroll records, Special Services issued its report to the Carrier on October 16th, and the letter of charges was issued three days later.

It is contended that the Carrier knew of Claimant's involvement on October 4th and that Rule 43 (a) required that he be notified of the investigation by October 14th. Instead the notification was on October 19th, five days late rendering the imposition of discipline improper ab initio.

In the opinion of this Board the term "knowledge" presupposes dependable information beyond mere assertion without proof, and contemplates a reasonable period of investigation to obtain such information. The record establishes that on October 4th Carrier knew of Claimant's endorsement on the check but did not know when the alteration had taken place. Therefore further investigation was indicated. Knowledge that Claimant had cashed an already altered check was the conclusion of the inquiry and once this knowledge was gained the Carrier acted in timely fashion. The record further establishes that the amount of the altered check was significantly higher than any previous check received by Claimant in the prior twenty months, that Claimant had never before received a check in an amount in excess of his earnings, that the alteration was apparent on its face when Claimant cashed it. Thus, there was substantial evidence to sustain Carrier's decision to discipline Claimant. In view of the seriousness of his misconduct termination is reasonable.

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.

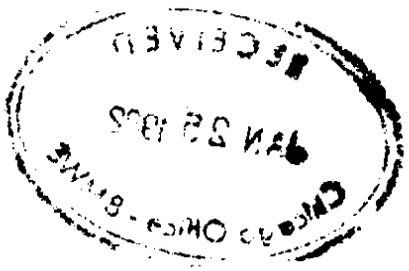
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 8th day of January 1982.



LABOR MEMBER'S DISSENT
TO
AWARD 23500, DOCKET CL-23301
(Referee Sirefman)

Award 23500 is in palpable error. Rule 43 of the agreement is clear. Carrier had ten days to act once it had knowledge of an altered check. Carrier did not act within ten days. Carrier admitted that it did not act within ten days but argued it acted within ten days of the date an officer "with authority" became aware of the occurrence. In accepting this argument the Board read additional language into the rule - "knowledge" is qualified by "dependable."

We cannot change the rule by interpretation. We cannot amend the rule by interpretation. The drafters of the agreement were capable of qualifying "knowledge" with "dependable." They did not do so, the Board should not have done so.

It is the strict policy of the Board to require the parties to comply with contractual time limitations. When time limitations, for the performance of an act, are embodied in an agreement, with precision, the parties are contractually obligated to comply with them. Whether the limitations are found in practice to be harsh, not equitable, or unreasonable is no concern of this Board. The remedy for such ills is negotiations between the parties. Our function is by statute confined to interpretation of the contract. We cannot by decision alter, vary, add to or subtract from the agreement of the parties. We have no power to dispense our sense of what we might consider

just and equitable under the circumstances--the terms of the contract are absolute. See Awards 11757 (Dorsey) and 19851 (Rubenstein).

Furthermore, express time limitations in grievance procedure have been many times held to be enforceable; primarily because the parties by including them in their agreement intended thereby to expedite the orderly handling of claims. Application of such rules is sometimes harsh but in the interest of efficient, proper procedure they must be applied. We are not granted the discretion to extend such statutes of limitations as the parties have fixed on themselves. We can only apply their own rule. See Awards 18352 (Dorsey) and 22162 (Weiss).

The Award is in palpable error and requires dissent.

J. C. Fletcher, Labor Member