

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24747
Docket Number MS-25075

Tedford E. Schoonover, Referee

PARTIES TO DISPUTE

(Mr. David C. Blackburn
(
The Montour Railroad Company

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 ex parte submission on May 16, 1983 covering an unadjusted dispute between me and the Montour Railroad Company.

My services with the Montour Railroad Company have been terminated because of my alleged failure to comply with company rules."

OPINION OF BOARD: Evidence shows claimant was notified by carrier letter of July 13, 1982 as follows:

"You are hereby ordered to attend a formal investigation in the office of R. J. Costello, Superintendent, Montour Railroad Company, on Friday, July 30, 1982 at 10:00 A.M. You are charged with violating Rules (T)B-4, (T)B-5 and (T)M of the Pittsburgh & Lake Erie Railroad Company General Rules, applicable also to the Montour Railroad.

(T)B. Loyalty to the Company is a condition of employment. Acts of disloyalty, hostility or willful disregard of the Company's interests are prohibited. Such acts include, but are not limited to, the following:

4. Refusal to cooperate with claim agents or other officials of the Company engaged in ascertaining facts and circumstances with respect to injuries, accidents, or any other incidents under investigation.
5. Making false statements or withholding facts concerning any incident under investigation by the Company.

(T)M. Employees who witness or have any knowledge of a personal injury or accident occurring on the property, or off the property if such incident involves the Company, must cooperate fully with representatives of the Claim Department or other Company officials investigating the matter. Such employees, when requested to do so, must give a full, true and correct statement of their knowledge of the incident. The form and manner in which said statement is obtained shall be at the discretion of the Company. If the statement is reduced to writing the employee giving the statement must acknowledge by personal signature that the statement is full, true and correct insofar as his knowledge of the incident is concerned.

These infractions occurred on April 7, 1976 and June 8, 1982. You may bring witnesses or representation of your choice, if you so desire."

The hearing was held on July 30, 1982 as scheduled and claimant participated therein. On August 3, 1982, Carrier addressed a dismissal letter to claimant a part of which follows:

"Upon review of testimony and documents submitted at your investigation, I find you guilty of violating Rules (T)B-4, (T)B-5 and (T)M of The Pittsburgh and Lake Erie Railroad Company General Rules, applicable also to the Montour Railroad...:

Observance of these rules is a condition of employment. Effective August 3, 1982, your services with the Montour Railroad Company are terminated for failure to comply with these rules."

Review of the evidence reveals that no appeal from the dismissal was progressed with the Carrier as required by the applicable labor agreement, the Railway Labor Act or the Rules and Regulations of the National Railroad Adjustment Board. In this connection we quote as follows from Section 3 of the Railway Labor Act, as amended and also the second paragraph under General Duties of Circular No. 1 of the National Railroad Adjustment Board:

"Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute."

"CLASSES OF DISPUTES

"The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this act (June 21, 1934), shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

No petition shall be considered by any division of the Board unless the subject matter has been handled in accordance with the provisions of the Railway Labor Act, approved June 21, 1934."

Due to the fact this dispute was not handled on appeal with the Carrier in the usual manner as required, we conclude the dispute is not properly appealable to this Board and is therefore, dismissed for lack of jurisdiction.

The requirements arising from the above provisions of the law are long established and have been generally adhered to by all Divisions of the Board. Illustrative of this point we quote below from Award No. 24010 of the Third Division:

"The record before us clearly demonstrates that claimant failed to bring her claim through the various levels of appeal on the property up to the highest designated Carrier officer. The Claimant did not make reasonable efforts to settle the dispute or engage in a conference with Carrier representatives as required by the Railway Labor Act. This Board lacks jurisdiction to consider the merits of any dispute unless it has been handled in accordance with the above cited sections of the Railway Labor Act and Circular No. 1. Third Division Award No. 19790 (Brent). Thus, we must dismiss the claim."

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

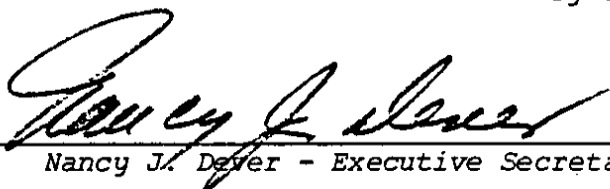
That the Claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March, 1984