

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25085  
Docket Number TD-24962

John F. Cloney, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association  
(  
(Burlington Northern Railroad Company

STATEMENT OF CLAIM: Request that Train Dispatcher I. E. Tally be compensated for all time lost in connection an investigation held on January 21, 1982. (Carrier file DI 82-4-23)

OPINION OF BOARD: No written appeal of this claim was made to the General Superintendent of Transportation, the officer designated by the Company to handle such cases. On July 22, 1981, the Company's Vice President Labor Relations had advised the Organization's General Chairman that claims resulting from disciplinary action should be appealed to the designated officer. The record does not indicate that exception to this procedure was taken by the Organization at that time.

A statement was introduced into the record by the Company to the effect that only four days before any appeal was filed in this dispute, the Organization's General Chairman and its Vice President were verbally reminded of the chain of appeal prescribed by the Company. Notwithstanding the written instructions and verbal advice, which remains unchallenged by the Employees in the record before the Board, the appeal was filed with the Assistant Vice President, by-passing the initial appeal step to the General Superintendent of Transportation.

While the General Chairman asserts he verbally discussed the case with the General Superintendent of Transportation, such discussion does not satisfy the clear and mandatory requirements of Article V(c), which provides in pertinent part:

"...If an appeal is taken, it must be filed in writing within thirty (30) days after date of decision, ..." (Emphasis added)

When the Company prescribes a certain chain of appeal and the Organization disagrees with its requirements, if that chain does not contravene the agreement's provisions, the Organization is bound to follow that chain and grieve the procedure concurrently or later. The Company's procedure in this instance does not contravene Article V(c), which simply prescribes, "... the right to appeal in succession up to and including the highest officer ...". This language does not limit the number of steps nor the identity of the higher officers in the succession. Of course, the Organization might well be on sounder ground if an inordinate number of steps were prescribed, or officers named outside the recognized or customary chain of command. In this case, however, the three officers named do not seem atypical nor the number of steps burdensome.

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The bargaining table is the proper forum for disputes concerning the number of steps or the identity of the officers therein.

With their Reply to the Carrier's Ex Parte Submission, the Employees submitted a letter from the Company's Vice President Labor Relations to the General Chairman, establishing a two-step chain of appeal, with the Assistant General Manager as the first step, which cancels the July 22, 1981 letter. The Employees assert this appeal was progressed properly and timely in precisely the manner set forth in this letter. The problem with this new letter is that it is dated May 26, 1982, after the appeal of the instant claim was progressed to the highest designated officer. The May 26, 1982 letter is useful in this dispute only to the degree that it illustrates the favorable results of negotiations to change the chain of appeal, and it applies to discipline cases appealed after May 26, 1982.

For the above reasons, the claim must be dismissed.

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 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 23rd day of October 1984.