

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43375
Docket No. MW-44506
19-3-NRAB-00003-170654**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(Toledo, Peoria & Western Railway

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed upon employee S. Chambliss by letter dated June 30, 2016 for alleged violation of GCOR 1.6, 1.19, 1.1.3 and 1.2.7 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File C-16-D070-7 TPW).**
- (2) The claim* as presented by Vice General Chairman G. Loveland on July 14, 2016, shall be allowed as presented because the claim was not disallowed in accordance with Rule 21.**
- (3) As a consequence of the violation referred to in Parts (1) and/or (2) above, the Carrier shall rescind the aforesaid dismissal decision and Claimant S. Chambliss shall be reinstated to service immediately with seniority and benefits unimpaired, be compensated for any time lost, made whole for any losses associated with the outcome of this investigation (financial, medical, personal, etc.) until he is returned to work.**

***The initial letter of claim will be reproduced
within our initial submission.”**

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

After Investigation held June 2, 2016 and by letter dated June 30, 2016, the Claimant – an employee in the Carrier’s service since February 2014 – was dismissed for failing to report damage to a Carrier vehicle.

For reasons more fully discussed in Third Division Award 43374, we are unable to reach the merits of this dispute because the Carrier did not comply with the time requirements in the Agreement as it did not deny the Organization’s appeal within the time limits specified in the Agreement.

In progression of the claim on the property, the Organization filed an appeal dated August 26, 2016, which was denied by the Carrier in its letter dated October 3, 2016 with the acknowledgment by the Carrier that the Organization’s August 26, 2016 appeal was “... received on August 31, 2016.” See Carrier Exhibit C. As in Third Division Award 43374, Rule 21(A) (which is extended to appeals taken to succeeding Carrier officers through Rule 21(C)) states in no uncertain terms that “[s]hould any claim or grievance be disallowed, the Carrier shall, within thirty (30) calendar days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance” [emphasis added]. When the Carrier denied the Organization’s August 26, 2016 appeal on October 3, 2016 with the acknowledgement that the Organization’s appeal was “... received on August 31, 2016”, that denial was outside the 30-day period required by Rule 21.

As in Third Division Award 43374, the consequences of the Carrier's failure to timely deny the Organization's appeal are clearly set forth in Rule 21(A) and (C) – i.e., “[i]f not so notified, the claim or grievance shall be allowed as presented ...” [emphasis added]. The self-enforcing terms of the provisions of Rule 21 therefore require that this claim be sustained “as presented.”

Clear contract language drives this dispute as it did in Third Division Award 43374 and this Board has no authority to ignore that clear language. See also, Third Division Awards 43323, 43324, 43325, 43326, 43327, 43328 and awards cited therein.

The claim in this matter shall be sustained. As a remedy, the Claimant shall be reinstated to his former position without loss of seniority and benefits and made whole. Further, “[t]he Carrier is entitled to ensure the Claimant is fit for duty, in all of its normal ways, prior to allowing this individual back into the workplace, and to make any deductions in backpay it normally would, including in mitigation.” Third Division Award 41682.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 18th day of January 2019.