

**NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION**

39 South La Salle Street, Chicago 3, Illinois

With Referee Livingston Smith

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

**BROTHERHOOD OF LOCOMOTIVE FIREMEN  
AND ENGINEMEN**

**NORTHERN PACIFIC RAILWAY**

**STATEMENT OF CLAIM:** "Request for the reinstatement of Fireman L. F. Neel, Pasco District, who was dismissed from service September 2, 1948, account of overstaying his leave of absence."

**FINDINGS:** The First Division of the National Railroad Adjustment Board, upon the whole record and all the evidence, finds that the parties herein are carrier and employe within the meaning of the Railway Labor Act, as amended, and that this Division has jurisdiction.

Hearing was waived.

Claimant here seeks reinstatement. He was dismissed from service on September 2, 1948 account of allegedly overstaying his leave of absence and failing to report for duty, in contravention of Operating Rule 701.

The record reveals that on January 24, 1948 claimant was granted a leave of absence for a period of ninety days, said leave being extended to July 24, 1948 at which time the respondent contends he failed to report for duty. The investigation was held on September 1, 1948, the day prior to his being advised that he had been dismissed from service.

The record further reveals that the leave extension was granted with the stipulation or understanding that the same might be cancelled or rescinded if necessities of the service so required. Under date of June 24, 1948, some thirty days prior to the expiration date of the extended leave, the respondent by letter advised claimant to report at once. Later, or more specifically, on the expiration date of the leave (July 24, 1948) a board-clerk made a call at claimant's home, but found him absent.

The organization makes no attempt to justify the failure of claimant to report for service but asserts that his dismissal from service was not in the premises justified and that the discipline invoked should be modified.

While the investigation was held on September 1, 1948, before A. H. Stohle, Master Mechanic, neither the claimant or anyone in his behalf appealed from the decision of discharge until January 1949, a period of time far in excess of the sixty day provision of Rule 131.

It is asserted that inasmuch as Rule 131 was not relied upon by the carrier during the initial stages of this matter, its consideration here is untimely and that the Board is now precluded from considering same in connection with this claim.

This contention is without merit. No rule of this schedule need be specifically pled at any specific time to be applicable. All of the schedule rules are before this Board at all times and may be given such consideration and weight as is deemed proper.

Rule 131 is without ambiguity. In substance, it provides that all grievances must be presented within sixty days to warrant consideration.

The Board, in Award 11992 which involved this respondent, so held. This matter is not now subject to review on its merits.

**AWARD:** Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of **FIRST DIVISION**

**ATTEST:** (Signed) J. M. MacLeod  
Executive Secretary

Dated at Chicago, Illinois, this 21st day of November, 1952.