

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

433 W. Van Buren Street, Chicago, Illinois 60603

With Referee Byron R. Abernethy

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN
THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of Brakeman J. A. Long for loss of earnings from time out of service until reinstated to service with seniority and vacation rights unimpaired."

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 was employed by this carrier December 15, 1943 as a Brakeman. On December 7, 1961, while still so employed he reported for work as scheduled at 11:59 P. M. Eleven minutes later, at 12:10 A. M., December 8, 1961 he marked off sick. Five and one-half hours later, at 5:40 A. M., he was arrested and charged with arson in connection with a fire in the vicinity of which he was found some twenty-eight miles from his place of reporting..

Claimant apparently remained in jail following his arrest until December 28, 1961, at which time he posted cash bond of \$2500.00 for his appearance before the February, 1962 term of the County Grand Jury, and was released pending trial. It appears that he was permitted to resume work on his release from jail and he continued to work until his discharge, April 26, 1962.

Claimant was indicted by the grand jury on February 20, 1962, and was charged with "illegally starting a fire on the woodland property of Douglas H. McKee." On February 21, 1962, he entered a plea of guilty to this charge and thereupon stood convicted of the offense. On March 21, he was sentenced by the County Circuit Court to be confined in jail for a period of one year. The sentence was then suspended upon condition that he be of good behavior during the period of one year and upon the further condition that he take psychiatric treatment.

On April 11, 1962, carrier served notice on claimant to appear for hearing on April 18, 1962, on the following charge:

Being an undesirable employe as the result of being responsible for the fire on the land of another person on December 8, 1961.

On April 14, the General Chairman challenged this notice of hearing, among other things on the ground that it was not timely under Rule 17 (c) which provides that:

Hearings will be held within seven (7) days, if possible, and employes promptly advised of decision.

Hearing was nevertheless held on April 18, as scheduled. At the hearing, the Organization again challenged the timeliness of the charge and hearing, contending again that the requirements of Rule 17 (c) had been violated. Thereafter, on April 26, 1962, claimant was dismissed from the service of the Company, "for behavior not becoming an employe account setting fire on the property of one Douglas H. McKee . . . in violation of one of the conditions of your employment."

The first matter which must be resolved here is that of the timeliness of the hearing on the charge which constitutes the basis of the disciplinary action taken.

In this connection it must be emphasized at the outset that the only charge officially brought against claimant, the only charge investigated at the hearing, and the only basis stated for the disciplinary action taken was, "Being an undesirable employe as the result of being responsible for the fire on the land of another person on December 8, 1961." For this reason, this Board may not now take cognizance of the several other bases for carrier's disciplinary action suggested in carrier's submission, but with which claimant was never charged, of which he was never notified, which were not investigated at the hearing, and upon which claimant was never given an opportunity to defend himself. Similarly, in ruling on the timeliness of carrier's action under Rule 17, this Board may consider carrier's action only in relation to the one charge growing out of the fire set on December 8, 1961.

In an earlier case involving these same parties and the application of this same rule (Award 14014), this Board held that, "It is a well established general principle of law that a statute of limitations begins when the cause of action arises." In this case the sole cause of action specified in the charge and notice of hearing, and in the notice of discharge was that of being an undesirable employe as a result of being responsible for the fire on the land of another person on December 8, 1961.

The record is clear and unmistakable that claimant's responsibility for that fire was admitted and was established when claimant pleaded guilty thereto on February 21, 1962. The cause of action upon which carrier relies clearly arose at that time, if not before. Yet claimant was not charged with employe misconduct as a result thereof until April 11, 1962, and hearing was not held until April 18, 1962, approximately two months after the cause of action arose.

Moreover, in spite of the fact that petitioner challenged the timeliness of carrier's action before the hearing was held, at the time of the hearing, and again in its submission to this Board, carrier has offered no explanation, and has made no showing of any kind as to why it was not "possible" to comply with the seven (7) day time limit fixed by the parties in Rule 17 of their contractual Agreement.

Under these circumstances, while we in no way condone claimant's con-

duct, we think this Board is barred from considering this case on its merits and that a sustaining award is indicated. To hold otherwise would require us to read into Rule 17, Paragraph (c), exceptions to the seven (7) day time limit which were not included there by the parties. This we may not do.

AWARD: Claim sustained.

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

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 6th day of August 1965.