

NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION

Form 1

Award No. 24292  
Docket No. 43991  
93-1-N-2221

The First Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

PARTIES TO DISPUTE: (Locomotive Engineer J.R. Stultz, Sr.  
(  
(Norfolk Southern Corporation

STATEMENT OF CLAIM:

"Claim of Virginia Division Winston-Salem District Engineer J.R. Stultz, Sr., SSA# 229-64-6142, for removal of forty (40) days actual suspension from his record and pay for all time lost in connection with the assessed discipline."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

The instant claim for the Claimant was appealed to the Carrier's highest designated officer to handle discipline matters by the Organization's General Chairman on September 15, 1992. The record reveals that the Carrier issued a denial decision on September 21, 1992 with an agreed upon rejection stamp. On September 28, 1992, the General Chairman rejected the highest officer's decision; and on September 30, 1992 the claim was discussed in conference and the rejection affirmed by the Carrier.

Section F(2) of the Discipline Rule, between the Carrier and the BLE states:

"SECTION F. Time Limit on Appeals

2. The procedure outlined in paragraph 1 shall govern in appeals taken to each succeeding

officer (\*). Decision by the highest officer designated to handle discipline matters shall be final and binding unless within thirty (30) days after written notice of decision, said officer is notified in writing that the decision is not accepted.

Thereafter, if conference is requested by either party it will be held within thirty (30) days of date of decision, otherwise conference will be considered as having been waived by mutual consent. All appeals involved in a decision of the highest officer shall be barred unless within ninety (90) days from the date of said officer's decision proceedings are instituted by the employee or the employee's duly authorized representative before a tribunal having jurisdiction pursuant to law or agreement of the matter involved. (Emphasis added.) (\*Footnote deleted.)

We are compelled to find that neither the organization nor the claimant complied with the 90-day requirement set forth in Section F(2). The carrier's highest officer designated to handle discipline matters issued his denial decision on September 21, 1992. No proceedings were instituted progressing the claim by the employee nor his authorized representative, for final adjudication within the 90-day period, and it was not until March 16, 1993 that claimant served notice of his intention to file his case with the First Division, well over 75 days beyond the 90-day time limit to institute proceedings for final adjudication. The fact that claimant had a conference with the carrier on February 3, 1993 does not rejuvenate the time limits absent a showing of an actual agreement to extend or alter the time limits. Section F(2) sets forth the period as "...ninety (90) days from the date of said officer's decision..." and Section F(2) also sets forth the consequences of failure to institute proceedings for final adjudication within the time limit and that is that the appeals "... shall be barred...."

Since neither claimant nor his representative complied with Section F(2) we are compelled to dismiss this claim.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of First Division

Attest: *Catherine Loughrin*  
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 18th day of March 1994.