

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
Pere Marquette District**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that

(1) The Agreement governing hours of service and working conditions between the parties was violated by the Carrier in the treatment accorded Yard Clerk Robert Rittenger, when it suspended him from service September 27 to October 16, 1953, on charges not proven, and

(2) Claimant Robert Rittenger shall have his record cleared of all charges and compensated for all monetary losses sustained from September 27 to October 16, 1953.

OPINION OF BOARD: Claimant was removed from service and charged with failure to protect his assignment.

The hearing was conducted by a Trainmaster but the decision was made by a second Trainmaster in collaboration with the Superintendent who was the next succeeding higher officer designated by the Carrier to whom appeal might be made.

Successive appeals were taken to the Superintendent and to the General Manager both of which were denied. Claimant was represented throughout by his General Chairman. Both appeals were taken on the merits only.

First. Rule 22 explicitly guarantees the right of appeal "to each succeeding higher officer up to and including the highest officer designated by the carrier to whom appeals may be made." What this rule means and requires is independent consideration and decision at each successive appellate step. By participating in and giving his written approval to the initial decision, the Superintendent made it his own and so pre-judged, denied and nullified the right of appeal to him.

Past practice and acquiescence may serve to resolve ambiguities or uncertainties but not to nullify a rule as plain as this one.

Second. It is urged by the Carrier that this objection was waived by failure to specify it as a ground for appeal on the property. Numerous

awards are cited but in the main they relate, not to fundamental issues of fair and impartial hearing, but to procedural technicalities such as the sufficiency and certainty of the charge (Awards 2696, 3270, 3515 and 4781), failure to request adjournment to interview witnesses (Awards 2696, 3213 and 4976), failure to render decision within 20 days after hearing (Award 3778) and the like.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employes 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

Claimant was not accorded a fair and impartial hearing within the requirements of Rule 22 of the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 24th day of June, 1955.