

Award No. 1743

Docket No. 1741

NATIONAL RAILROAD ADJUSTMENT BOARD

FOURTH DIVISION

The Fourth Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL HOSPITAL DEPARTMENT

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5118) that:

(a) The Illinois Central Hospital Department violated rules of the agreement between the parties in the treatment accorded employe Mr. Everett Johnson, porter, when Management dismissed him from the service effective May 20, 1961.

(b) Mr. Johnson's record be cleared of the charges preferred against him by Superintendent Baker on May 5, 1961 and that he be reinstated to the service with seniority and all other employment rights restored and be compensated for all wage losses sustained retroactive to May 4, 1961.

OPINION OF BOARD: This controversy concerns the dismissal of Claimant, a hospital porter, for misconduct.

Carrier maintains that the claim must be dismissed for want of jurisdiction since it has not been presented to the proper Division of the National Railroad Adjustment Board. In Carrier's view, the Third Division is the appropriate forum for this dispute in view of the requirements of the Railway Labor Act and Rule 22(d) of the applicable Agreement.

Section 3 (h) of the Railway Labor Act defines and limits the jurisdiction of the four divisions of the Board. It prescribes that the Third Division shall have "jurisdiction over disputes involving station, tower, and telegraph employes, train dispatchers, maintenance-of-way men, clerical employes, freight handlers, express, station and store employes, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employes. . . ." Section 3 (h) further provides that the Fourth Division shall have jurisdiction over disputes involving, among others, all employes of carriers "over which jurisdiction is not given to the first, second and third divisions." In our opinion, by even a liberal construction of Section 3 First (h), jurisdiction over disputes involving hospital porters has not been given to the First, Second or Third Division and, therefore, is vested in this, the Fourth Division.

Manifestly, the parties lack the power to decide by Rule 22(d) or any other agreement that the Third Division shall have jurisdiction over a dispute that is within the Fourth Division jurisdiction. Accordingly, we do not subscribe to Carrier's view that we do not possess the jurisdiction to determine the present controversy.

Turning now to a consideration of the claim itself, we find that charges of serious misconduct have been levelled against Claimant. These charges are of such a nature as to invite quick resentment, immediate distaste and unconsidered judgments. In this setting, it is all the more important that Claimant receive the full protection of the Agreement, including particularly the fair and impartial investigation and appellate procedure it contemplates.

Claimant was entitled under Rule 20 to have his case considered in an independent and unbiased manner by each appeals officer "up to and including the highest officer designated by the Hospital Department to whom appeals may be made. . . ." In this case, the Hospital Administrator was the highest appeals officer designated and the record, particularly his statement introduced in evidence at the hearing, leaves no doubt but that he had already judged the matter and that an appeal to him would be meaningless. Claimant thereby was deprived of a major right and his case was prejudiced. We will sustain the claim. See Third Division Award 7021.

In view of Claimant's demise, the relief sought in paragraph (b) of the claim will be limited to (1) clearance of Claimant's record and (2) back pay from May 4, 1961, to the date of death.

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

The carrier and the employe 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.

The parties to said dispute waived right of appearance at hearing, but were granted privilege of appearing before the Division, with the Referee sitting as a member thereof, to present oral argument.

The Agreement was violated.

AWARD

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FOURTH DIVISION

ATTEST: Patrick V. Pope
Secretary

Dated at Chicago, Illinois, this 30th day of January, 1963.