

Award No. 2232

Docket No. 2303

NATIONAL RAILROAD ADJUSTMENT BOARD

FOURTH DIVISION

PARTIES TO DISPUTE:

JOHN E. SANDS

NORFOLK AND WESTERN RAILWAY COMPANY

(Lake Region)

STATEMENT OF CLAIM: Claim for termination pay upon the elimination of Petitioner's patrolman's job at Osborn Yards, Hammond, Indiana, by the Norfolk & Western Railway Company after merger of Nickel Plate Railroad with the Norfolk & Western Railway Company. The railroad employer ordered transfer of Petitioner to Calumet Yards, Chicago, Illinois, and refused to negotiate the matter. Petitioner requested termination pay, which was refused.

OPINION OF BOARD: The powers of the National Railroad Adjustment Board are derived solely from statute. Section 3, First (i) of the Railway Labor Act, as amended, provides that disputes "shall be handled in the usual manner up to and including the Chief Operating Officer of the Carrier designated to handle such disputes."

The Carrier contends that the Agreement between it and the Organization, of which Mr. Sands was a member in good standing, has not been complied with, and, as a defense to this contention, the Carrier relies on Rule 18 of said agreement, as follows:

"RULE 18.

DISCIPLINE AND GRIEVANCES

An employe who has been in service 90 days or more, or whose application for employment has been approved, will not be disciplined or dismissed without a fair and impartial hearing, at which he may be assisted by representative of his choice. He may, however, be held out of service pending such hearing. The date for the hearing shall be fixed within seven days after the date the employe is charged with the offense or held from service. Decision shall be rendered within ten days following the completion of such hearing. An employe who has not been disciplined or dismissed but considers himself unjustly treated shall have the same right of hearing and appeal as herein provided if written request is made to his superior officer within 10 days after the date of the occurrence giving rise to the grievance; otherwise claim and hearing will be barred." (Emphasis ours.)

(b) Hearing will be held at the point of assignment of employe involved, when practicable; if transcript is made of the statements given, employe or his chosen representative, upon written request, will be furnished a copy.

(c) Decision of officer who initially rules upon the case may be appealed in writing to the next higher officer within ten days from date of decision, and a copy of such appeal shall be furnished the officer whose decision is appealed.

(d) Similarly, and within the same time limitation, appeals may be made in turn to higher officers up to and including the highest officer designated by the company to whom such appeals may be made. Each such company officer, or his authorized representative, to whom appeal is made will render his decision as promptly as practicable (ordinarily within 15 days) consistent with any necessary conferences and his proper consideration of all the facts of the case.

(e) If further handling is desired following decision of the highest officer, or his authorized representative, designated by the company to hear appeals, the proceedings must be initiated within 90 days from date of such decision; otherwise the case will be considered closed.

(f) If, upon final decision, the charge against an employe is not sustained, it shall be stricken from the record. If, by reason of such unsustained charge, an employe has been suspended or dismissed, he shall be reinstated and allowed payment for assigned working hours actually lost, less any earnings in or out of the service. If not reinstated, an employe, upon written request, shall be furnished a letter stating the cause for dismissal.

(g) Request for removal of discipline, or complaints of alleged unjust treatment, that are not filed and progressed within the time limitations provided in this rule will not be subject to consideration. Similarly, claims for additional pay must be made in writing within 30 days from date employe receives his pay check for period involved; otherwise, they will not be considered."

The record clearly shows that the claim in this docket was not progressed on the property in accordance with Section 3, First (i) of the Railway Labor Act, as amended; and that neither Mr. Sands nor his representative followed the necessary procedure specified in the Agreement to properly progress this claim. This Board is without authority to change the Railway Labor Act or any part of the Agreement as written.

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 were given due notice of hearing thereon.

AWARD

Claim dismissed.

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

**ATTEST: Muriel L. Humfreville
Secretary**

Dated at Chicago, Illinois, this 5th day of October, 1967.