

Referee Robert M. O'Brien

PARTIES Kermit Kimble Sheehan
TO
DISPUTE: Union Pacific Railroad Company

STATEMENT Claim and request of Kermit Kimble Sheehan that:
OF CLAIM:

Kermit Kimble Sheehan claims that he is entitled reinstatement with back pay from October 17, 1969, by reason of his wrongful discharge from employment with the Union Pacific Railroad Company and his denial of a fair hearing as required by Rule 23 of the Labor Management Agreement between the American Railway Supervisor's Association, Inc., and the Union Pacific Railroad Company.

OPINION On October 6, 1969 an article appeared in the Desert News,
OF BOARD: a newspaper of general circulation in the Salt Lake City area, indicating that Utah State Liquor officers had filed charges of illegal sale of alcohol against claimant. Carrier was not mentioned in the article nor was claimant identified as an employee of Carrier. Following a hearing held October 10, 1969, claimant was discharged effective October 17, 1969 for violation of Rule 700 in that Carrier had been subjected to criticism and embarrassment due to the above newspaper article. Claimant now seeks reinstatement with back pay due to his alleged wrongful discharge.

The claim had been appealed on the property and, also, suit was filed by claimant in the Utah courts on a breach of contract theory. That suit was dismissed on November 7, 1972 the Court concluding that appeal to the National Railroad Adjustment Board was mandatory in grievances of this nature.

Carrier argues that the claim is barred by the applicable time limits since it was not timely filed with this Board. We agree with Carrier in this regard. Under date of April 21, 1970 an agreement was entered into between Carrier and the American Railway Supervisors' Association, the duly authorized bargaining agent for foremen in Carrier's Mechanical Department. That Agreement provided the machinery for handling all claims and grievances arising on or after May 1, 1970 as well as all pending claims, and provided, in pertinent part,:

" . . . in the case of all claims or grievances on which the highest designated officer of the Carrier has ruled prior to the effective date of this rule, a period of 12 months will be allowed after the effective date of this rule for an appeal to be taken to the appropriate board of adjustment. . . . before the claim or grievance is barred."

It is our opinion that the time limits contained in the above Agreement are clearly applicable to the claim at hand. Mr. Acord, Carrier's highest designated officer, had declined the claim on February 3, 1970, which was prior to the effective date of this rule, May 1, 1970. Consequently, it was incumbent upon claimant to file his claim within 12 months of the effective date of the rule, or by May 1, 1971. However, Mr. Arnold, claimant's attorney, did not submit his notice of intent to file an ex parte submission with this Board until July 25, 1973, well after the 12 month time limit.

Mr. Arnold, claimant's attorney, has argued the Agreement that was in effect at the time of discharge is applicable to this claim, and since that Agreement contains no time limits on the filing of claims with this Board, the claim is not barred. We disagree, however. The April 21, 1970 Agreement explicitly applies to claims filed prior to the effective date of this rule on which Carrier's highest designated officer has previously ruled. All the conditions of that Agreement have been met in the claim before us and we cannot disregard the clear provisions thereof. Nor do we agree with Mr. Arnold that the time limits did not commence running until the Utah court dismissed claimant's breach of contract suit in November, 1972. Filing of the civil suit did not have the effect of obviating the time limits in the Agreement. When claimant decided to pursue his remedies with this Board he was obligated to do so in the manner prescribed in the applicable Agreement in effect on the property. Since he failed to comply with the time limits of the Agreement, we have no standing to decide the merits of the claim and we are constrained to dismiss the claim for non compliance with the applicable time limits.

FINDINGS:

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

The carrier and the 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.

The parties to said dispute were given due notice of hearing thereon.

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

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of the Fourth Division

ATTEST: Executive Secretary
National Railroad Adjustment
Board

By: 
Assistant Executive Secretary

Dated at Chicago, Illinois, this 5th Day of March, 1974.