

The Fourth Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

(Gary L. Minix  
PARTIES TO DISPUTE: (  
(Florida Express Carrier, Inc.

STATEMENT OF CLAIM:

Claim of Gary L. Minix for reinstatement, with clear record, and pay for all time lost account of being dismissed following Formal Investigation held March 29, 1986.

FINDINGS:

The Fourth 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 employes 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 Claimant was notified of his dismissal by letter dated April 3, 1986. On May 7, 1987, he advised the Board of his intention to file a dispute with the Fourth Division. Respondent objects to the consideration of this dispute by the Board based upon its contention the claim was not progressed on the property through conference discussion as required by Section 152, Second and Sixth. Additionally, Respondent argues the claim is barred by the time limits of its internal procedures for handling claims and grievances (Circular 2) because the Claimant failed to notify the highest appeals officer within thirty (30) days after written notice of the officer's decision that the decision was not accepted.

This Board finds no evidence that the Claimant is covered by a collective bargaining agreement, to which Respondent is a party, relating to rates of pay, rules, working conditions, or the handling of claims and grievances. On the contrary, the record establishes that Respondent unilaterally established an internal disciplinary system (Circular 1) and procedures for handling claims and grievances (Circular 2). There is no evidence the Claimant or any union representing him, in any manner, participated in the promulgation of these policy circulars.

The jurisdiction of this Board is determined by applicable provisions of the Railway Labor Act. Accordingly, we have consistently held that under Section 152 of the Act, which defines the purposes of the Act, and Section 153, First (1) of the Act, our jurisdiction is confined to disputes which flow from grievance provisions provided for by the parties under a collective bargaining agreement which provides for the protection sought. See Fourth Division Awards 4410, 4510, 4508, and 4548. This Board has carefully re-searched the asserted standing of the Claimant and finds no basis to conclude that Congress intended that claims, without benefit of a labor agreement providing for grievance procedures, come within the purview of the Board.

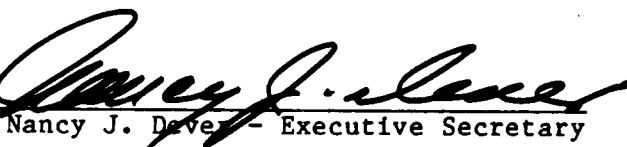
Respondent promulgated procedures for handling claims and grievances which require an employee to notify its highest appeals officer in writing that his/her decision is not acceptable within thirty (30) days of that officer's decision. Thus, even if the procedures could somehow be raised to the status of an Agreement, the Claim would be barred because the Claimant did not comply with its time limits. Notwithstanding the above, we stress that the record contains no evidence this claim was progressed on the property through conference discussion as required by Section 152, Second and Sixth. See Fourth Division Awards 863, 978, 1098, 1433, 2421, and 3045.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Fourth Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of May 1989.