

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute:     (  
                              Sheet Metal Workers' International  
                              Association  
                              (  
                              The Alton and Southern Railway Company

Dispute: Claim of Employees:

1. That the Alton and Southern Railway Company violated the controlling agreement, particularly Rules 13 and 24 (A) and (M) when furloughed Sheet Metal Worker Helper Stanford Riley was refused position of Sheet Metal Worker Apprentice.
2. That accordingly, the Alton and Southern Railway Company, who returned Sheet Metal Worker Apprentice Stanford Riley to service on August 10, 1976 with all seniority rights unimpaired, now be ordered to compensate him as follows:
  1. Compensate Claimant for all time lost.
  2. Make whole for all vacation rights.
  3. Pay the premium (Hospital Association Dues) for hospital, surgical and medical benefits for all time out of service.
  4. Pay premiums for Group Life Insurance for all time held out of service.
  5. Compensate Claimant for all holidays while out of service.
  6. Compensate Claimant for all sick pay.
  7. Make whole for all insurance premiums.
  8. Compensate Claimant for all jury duty pay lost.

Findings:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was furloughed as a Sheet Metal Worker Helper on November 4, 1974. This dispute centers on his claim for a position as Sheet Metal Worker Apprentice filled by the Carrier with a new employee in June 1975. Claim was initially filed with the Carrier on February 14, 1976.

Article V of the September 11, 1954 Agreement states "all claims or grievances must be presented in writing by or on behalf of the employee involved, to the office of the Carrier officer authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based."

The record shows that the Claimant had knowledge in June 1975 of the Apprentice position he was seeking, and he was specifically told (through an acknowledged telephone message to his wife) that he was not selected for the position. An initial claim eight months later is far beyond the time limits provided and must therefore be barred.

The Organization argues that the time period begins to toll only after the issuance of seniority standings in January 1976, at which time the hiring of a new employee in the Apprentice position came to the General Chairman's attention. While this time sequence may be correct, it does not mitigate the consideration that the employee directly involved was fully aware of the situation in June 1975.

One of the purposes of time limits on claims is to lessen the extent of the loss to an employee and the consequent cost and inconvenience to the employer, should a claim be found valid. Another purpose is to insure that a dispute is discussed, initially at least, while pertinent facts are readily at hand. Such worthy purposes are defeated if time limits are ignored.

As to the merits -- setting aside the time limit question for this purpose -- the Board finds nothing in the rules cited by the Organization to require the employment of a Sheet Metal Worker Helper as a Sheet Metal Worker Apprentice. In addition, the Claimant was alleging, through a work-injury suit, a substantial physical disability at the time the position was open. While such allegations are frequently weighted with a measurable degree of argumentative emphasis, the Claimant therein may logically be bound by his own protestations of incapacity.

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Award No. 7398  
Docket No. 7279  
2-A&S-SM-'77

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this

