

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: (James Edward Waters
(Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That Carman James Edward Waters was unjustly treated and the provisions of the current agreement were violated when he was dismissed from service January 14, 1976.
2. That the Carrier be ordered to compensate James Edward Waters for all time lost for all regularly assigned work days, reinstating him to the service with all seniority and vacation rights, and all other benefits due under current agreements.

Findings:

The Second 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 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.

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

Claimant, a Carmen Apprentice, failed to protect his assignment for fifteen consecutive work days during December, 1975 and January, 1976. By certified letter dated January 14, 1976, the Carrier notified Claimant that it was removing Claimant from the seniority roster in accord with Rule 19 of the applicable Agreement.

Claimant asserts that he properly notified the Carrier, on December 15, 1975, that he was unavoidably detained from work. He also argues that the Carrier could not drop him from service without first holding a Rule 32 investigation. While the Carrier contends this Board lacks jurisdiction to consider this claim, on the merits, it emphasizes that Claimant was absent without authority and without giving proper notice.

Subsequently, on or about July 11, 1978, Claimant through his chosen representative wrote a letter to the Carrier stating that he desired to initiate a claim for reinstatement and back wages for the period since January 14, 1976. The letter is ambiguous. On the one hand, Claimant wanted more information from the Carrier concerning his personal and attendance records. On the other hand, the July 11, 1978 correspondence could be construed as the commencement of a

claim. On July 27, 1978, the Carrier provided the requested information and averred that any claim would be untimely under Rule 33. If Claimant intended to file a claim at this time, he did not pursue it through the various levels of appeal on the property.

Claimant formally filed a claim for reinstatement and back pay by an undated letter which the Carrier received on March 11, 1980. The Carrier responded that the claim was barred because Claimant had not filed the claim with the appropriate Carrier officer within the sixty-day limitation period set forth in Rule 33. Claimant then appealed his case to this Board.

The threshold issue is whether this Board has jurisdiction to adjudicate this dispute. Section 3, First (i) of the Railway Labor Act, 45 U.S.C. §151 et seq. ("Act") states:

"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes." 45 U.S.C. §153 First (i). (Emphasis added)

The Act requires the parties to attempt to adjust disputes in the usual manner before submitting a claim to this Board. If the dispute has not been handled in the usual manner, this Board is without jurisdiction to consider the merits of this claim. 45 U.S.C. §153 First (i).

On this property, Rule 33 governs the filing of claims and imposes a sixty-day limitation period which begins to run from the date of occurrence. The record reveals that Claimant initiated his formal claim on March 11, 1980. The claim was filed approximately four years after the expiration of the limitation period contained in the Agreement. Even if this Board were to rule that Claimant's letter dated July 11, 1978 constituted a proper claim, the alleged claim was not only untimely but also Claimant did not thereafter appeal the Carrier's denial. Claimant failed to handle his claim in the usual manner. Therefore, we lack jurisdiction to consider his claim.

We note that Claimant also argues that the Rule 33 limitation period is inapplicable to his claim because he asserts that, by dismissing him, the Carrier engaged in a "void" action. We disagree. Whether or not the Carrier's action was void under the applicable provisions of the Agreement cuts directly to the merits of the claim. As we stated above, we are precluded from addressing or considering the merits because Claimant failed to comply with the conditions set forth in the Railway Labor Act.

Form 1
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Award No. 9437
Docket No. 9065-I
2-B&O-I-'83

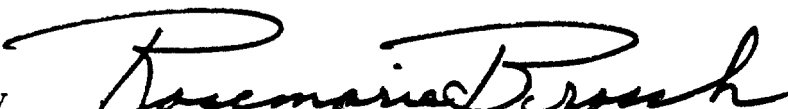
A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of April, 1983.