

The Second Division consisted of the regular members and in addition Referee Ida Klaus when award was rendered.

Parties to Dispute: (Lee Verto Gardner
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(National Railroad Passenger Corporation

Dispute: Claim of Employees:

"I was dismissed for (sic) Amtrak, and refused to reinstate me after I was found not guilty (sic) in the court of Law. I have had contact with Washington D.C., but the Carrier had not changed their position.

I wish to file a claim within 30 days to call to the National Railroad Adjustment Board, of the appeal, I hope to get another chance in my defense."

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 employees 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 were given due notice of hearing thereon.

The Board understands the issue in this case to be:

"The discipline assessed Carman Lee Verto Gardner of dismissal, effective February 14, 1980 was harsh, arbitrary and capricious;

That the Claimant be reinstated to Carrier's service and compensated for all time lost with seniority rights, vacation and all other benefits restored."

The claim protests the dismissal of the Claimant on February 14, 1980, on charges of theft of the Carrier's property.

The Carrier argues that the claim must be dismissed because it was not timely appealed to this Board as provided in Rule 23(d) of the Agreement. Rule 23(d) states, in pertinent part, that "Any appeal from the decision of the Director of Labor Relations must be made to a proper tribunal as established under the provisions of the Railway Labor Act within nine months of the date of such decision."

The claim was discussed in conference at the highest level on the property on October 30, 1980; a decision was rendered by the Director of Labor Relations on November 19, 1980 denying the claim. On December 5 the Organization advised the Carrier that it would appeal to the Board. On June 16, 1981, at the Organization's request, there was a further conference between the Carrier and the Organization, and the Carrier affirmed its denial of November 19, 1980. On November 19, 1981 the Claimant gave notice of his intention to file a "claim" with this Board and subsequently filed this appeal on January 25, 1982.

The Board must agree that the claim is untimely. The decision of the Director of Labor Relations was issued on November 19, 1980. The reaffirmance of that decision on June 16 cannot be regarded as a new decision from which the nine-month period was to run. The final date for filing was nine months from November 19, 1980. The date of any Court action has no bearing on the jurisdiction of this Board. Accordingly, the Submission to this Board on November 19, 1981 was untimely. Thus, this Board has no jurisdiction to consider this appeal.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 9th day of January 1985.