Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 14058
Docket No. 13945
13-2-NRAB-00002-120008

The Second Division consisted of the regular members and in addition Referee Martin W. Fingerhut when award was rendered.

(Jerry L. Smith
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

"This is to serve notice, as required by June 23, 2003, Uniform Rules of Procedure of the National Railroad Adjustment Board, of my intention to file a Submission covering an unadjusted dispute between myself and the Amtrak Transportation Incorporation, Second Division involving the following:

Concerning a letter I received dated August 30, 2011; which stated that my delay in returning to work was due to Amtrak not having records sooner. That was not the case; This is about a cover-up to allow a non-union worker/a fired manager brought on NY Division and was able to bump a position. I was out on medical leave. As to NRPC Medical Form 2717 submitted to my doctor, which was faxed to the Amtrak Human Resource Medical Department and sent by Certified mail to Philadelphia, Pa in June, 2008. Upon which, two weeks later, I received a returned letter of Narrative Report which according to Amtrak is the Narrative Report, in February, 2007. My doctor's report had been received and this information had not been forwarded back to Sunnyside, NY. I have return receipt to show proof to which Mike Miller, Union Rep was sent copies. Many rules were violated concerning this matter. I was disqualified three months after I was out sick. This letter was about my health and welfare and the letter was dated June 16, 2008. I called Mike Miller, ARSA Union Rep to explain this to him and he even said that they cannot do that; I asked him to challenge the letter. I later contacted another craft lawyer. I was told it was a gray area. Time past, I contacted Mike Miller on January 28, 2009 in Sunnyside, his stand was with the company. According to the contract, a return to duty

after disqualification by company states that I should have been seen by a neutral doctor, not an employee of the company, which never happened.

I spoke to Charlie Woodcock III in December, 2008; he asked if I had any disciplinary problem, I answered no; he said that he could not do anything for me. On June 10, 2009, one year after I was suppose to have been retnrned to work, I called the union office in Rockville, MD to talk to Joe DeRillo stated he did not know anything about the case and told me to wait; he then called Mike Miller via three way. During this three way call, Mike said 'Oh, by the way Smitty,' (as I am known around Amtrak) . . . 'your claim was denied.' I ask where was this decision in writing? I told him to send this decision in writing. This claim was denied April 9, 2009, by the Superintendent's Office and the union did not make a stand on my behalf. I spoke to Ms. Bridget Donohue, and sent documents of what happened; she contacted Philadelphia's medical department. It was told to Ms. Donohue that I had called; Tim McLaughlin, Registered Nurse/Amtrak Health Services was on vacation between August, 2008, and September, 2008; all decisions from medical department of really happened was a cover-up. My doctor made a statement in a phone conversation with Tim McLaughlin on November 17-18, 2008 has to be true; my doctor, on two separate phone conversations, had medically cleared me to return to duty, June 10, 2008; to which Mike Miller did not do until ten months later. Union Policy concerning disallowed claims according to a letter dated October 1, 2011; EEO policy, if Mike Miller spoke in a phone call on November 18, 2011 after 10:30, Dr. Michael Diaz, Tim McLaughlin, RN and Mike Miller, Union. Mike called me at 4:00 pm and said that I was okay to return to work. According to fonr contract lawyers, a portion of the Railroad Labor Act, which in this case falls under, is a way of describing what happened to me is unjnstified. I have been a Foreman II for 37 years. Every decision I had made over my career was by FRA and Amtrak Policy. A 1983 incident with Train 231, car added after clock-out time; a letter was put in my file, and now it's 2011, it's still there. My claim of five weeks vacation and five months pay was disallowed. No grievance was filed on my behalf by ARSA; Rule 33 TCU contract violated. Ms. Bridget Donohue has the claim of compensation and Frank Ross' denial letter of claim, also the letter of Dr. Michael Diaz which Frank stated the

claim did not reach his office until on or about April 9, 2009; Charlie Woodcock said it was denied because of late medical documents. That MOLA pack I received in September of 2006, I had an operation on September 6, 2006; I spoke to Tim McLaughlin and explained to him that I was very ill and unable to fill out these medical forms. I was given another time frame. My stand is the NRPC 2717 Return to Duty; I had been replaced by someone who had been fired. It cannot be justified what was done. Mike should have taken this claim to Arbitration. I am appealing the letter which closed this case; ten months for ARSA to file a claim, shows that something is wrong. My work ethics has always been 110% and always will be. I had been put in the system as retired, I saw that for myself. If you just look at my records, there has never been any report of injuries, I've always maintained high standards, able to communicate with anyone, any department, always able to make a constructive decision and stand behind it.

In closing, I am asking to be compensated five months loss of wages, five weeks vacation pay, and over-time pay that was allotted to Junior employees from June 15, 2008, through November 18, 2008.

There is also a defamation of character of an inter-office memo in my personal files dated November 2, 1976 from Mr. C. E. Woodcock III; I would like to grieve this matter also, and to be further compensated for defamation of character. Mr. Woodcock, Chief Labor Relations Officer, and Assistant Vice President of Amtrak dated a letter on August 30, 2011 which was his choosing to close my case. It is my personal opinion that this is the reason why I did not get a fair decision."

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 were given due notice of hearing thereon.

The instant claim was filed on the property by the American Railway and Airway Supervisors Association representing the Petitioner's craft of contract Foreman. The Organization's claim, in essence, alleged that the Carrier violated the Agreement when it failed to return the Petitioner to service in a timely manner following his medical leave of absence.

Following an abbreviated period of on-property handling of the claim, the Petitioner unilaterally filed the above-quoted February 23, 2012 Notice of Intent setting forth his claim with the Second Division of the Board. As noted above, the first paragraph of his Notice of Intent recited:

> "This is to serve notice, as required by June 23, 2003 Uniform Rules of Procedure of the National Railroad Adjustment Board, of my intention to file a Submission covering an unadjusted dispute between myself and the Amtrak Transportation Incorporation, Second Division involving the following: . . ." (Emphasis added)

In its Submission before the Board, the Carrier discusses the defenses that it raised on the property, plus an additional defense that the Board must dismiss the claim on jurisdictional grounds without reaching the merits. The Carrier contends that the claim must be dismissed because the Second Division of the Board, the venue selected by the Petitioner to resolve the dispute, does not have jurisdiction over claims involving the Petitioner's craft of contract Foreman. We find merit in this argument.

The jurisdiction of the Board is explicitly limited by Section 3, First (h) of the Railway Labor Act. The Second Division has jurisdiction over disputes involving:

> ". . . machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, carmen, the helpers and apprentices of all the foregoing, coach cleaners, powerhouse employees, and railroad-shop laborers."

The jurisdiction for the classification of contract Foreman is found in the Fourth Division of the Board, which provides, in pertinent part:

> "Fourth division: To have jnrisdiction over disputes involving . . . all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions."

Second Division Award 12712 involved a virtually identical situation. Therein the Board concluded:

> "Accordingly, as this Division of the Adjustment Board lacks jurisdiction under Section 3, First (h) of the Railway Labor Act, it may not reach the merits. As the governing Agreement and disputed Rule covers contract Supervisors, the provisions of the Act, supra compels us to dismiss the Claim."

We have no recourse but to come to the same conclusion here.

In view of the above finding, the Board concludes that it is unnecessary to consider the other procedural and substantive defenses raised by the Carrier.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 5th day of August 2013.