

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (Lloyd E. Weiser, Carman, Petitioner
(Southern Pacific Transportation Company
((Texas and Louisiana Lines)

Dispute: Claim of Petitioner:

The question involved is whether the collective bargaining agreement between Southern Pacific Company, Texas and Louisiana Lines and the Employees Represented by System Federation No. 162, Railway Employees Department, American Federation of Labor - CIO Mechanical Section thereof provides for Mr. Lloyd E. Weiser's re-employment on a light-duty basis.

The carrier states that there are no light-duty positions in the carman area. Mr. Weiser contends that the company is breaching the aforementioned agreement by not allowing Mr. Weiser's return to his former position on a light-duty basis.

Mr. Weiser asserts Rules 20 and 117 as the applicable rules of the present case.

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, returning to work after a layoff due to illness on July 12, 1971, was required to submit to medical examination. He secured a doctor's release which specified that he could only perform light work. On July 13, 1971 the Superintendent refused to permit Claimant to report for duty with the limitation prescribed by the physician on the alleged basis that there was no light duty in the Carmen's classification. The Carmen's Organization filed a grievance in behalf of Claimant on August 22, 1971 which was progressed to the highest officer of Carrier in accordance with the Agreement.

In the General Chairman's letter to the Carrier's highest officer, dated September 30, 1971, he set forth the claim as follows:

"Therefore we are requesting that Carman L. E. Weiser be permitted to return to his regular assignment as carman, and be compensated for eight (8) hours pay at the pro rata rate for the dates of July 13, 14, 17, 18, 19, 20 and 21st, 1971, for not being allowed to return to his regular assignment on July 13, as set out in provision of the current agreement in effect."

By letter dated November 26, 1971, following a conference held on November 23, 1971, Carrier's highest officer refused to accede to the Claim, stating however that Carrier would return Claimant to service when it received medical advice that he was able to perform his duties without limitation.

On February 20, 1973 Claimant's attorney filed notice of intention to file an ex parte submission, which submission was filed in March of 1973. In its submission, Claimant's representative, inter alia, alleged that Claimant had been discharged on October 22, 1971 and further requested that he be reemployed and paid back pay from the date of discharge till the date of reemployment.

Rule 32 (c) of the Agreement provides:

"(c) The requirements outlined in paragraphs (a) and (b), pertaining to appeal by the employee and decision by the Carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Carrier to handle such disputes. All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employee or his duly authorized representative before the appropriate Division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the 9 months' period herein referred to."

Section 3, First (i) of the Act provides:

"(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."

It must be noted that the Claim, as submitted to this Board, differed substantially from that processed on the property; thus the claim did not conform to the requirements of Section 3 First (1) quoted above. Additionally, the claim presented to the Board far exceeded the nine month time limit provision of Rule 32 since at best it was submitted some fifteen months after the final step on the property. For the reasons indicated the claim is fatally flawed and we cannot consider the merits; we must deny the claim.

A W A R D

Claim denied.

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 28th day of November, 1973.