

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

Parties to Dispute: (August C. Kapor
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(Merchants Despatch Transportation Corporation

Dispute: Claim of Employees:

ISSUE: Whether Petitioner, AUGUST C. KAPIOR, is entitled to the displacement allowance provided by 45 USC §775.

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 employes 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. C. Kapor, was employed by Carrier as a Carman at its Kensington Shop in Chicago, Illinois from October 31, 1964 to July 9, 1976, when he was furloughed account of declining refrigerator car business. At the time of his furlough, Claimant was on temporary disability leave. In September 1976, pursuant to Title V of the Rail Reorganization Act of 1973, the Consolidated Rail Corporation (Conrail) Carrier's parent body, offered Claimant a position at Elkhart, Indiana, approximately 100 miles from his seniority point. However, when Conrail discovered that Claimant was on disability leave, it withdrew its offer of employment. On July 9, 1977, Claimant's physician attested to his ability to return to work.

Claimant contends that as of July 9, 1977 he should have received severance pay or a displacement allowance pursuant to the Rail Reorganization Act 45 USC 775(c). In Claimant's view, Conrail could rescind its offer of employment only during his period of disability. According to the Claimant, once the disability ceased, all benefits and privileges previously available to him as a furloughed employe should have been restored.

Carrier, on the other hand, insists that it did not violate either applicable law or the Agreement here. First, Carrier contends that this Board has no jurisdiction over the claim herein, because the dispute was not handled in accordance with the Railway Labor Act and the Agreement between the parties.

On the merits, Carrier asserts that it never received Claimant's physician's certificate attesting to his capacity to return to work in July 1977. Thus, as far as Carrier is concerned, Claimant is still on medical leave and is thus not entitled to any protective benefits nor to a return to active service.

This claim must be denied on procedural grounds. Section 3 First (i) of the Railway Labor Act provides that disputes arising out of agreements concerning rates of pay, rules or working conditions "shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes...."

The "usual manner" of handling disputes is described in Rule 24 of the Agreement. That rule requires that disputes be first submitted to the appropriate local officer of Carrier designated to hear such claim. Further, Claimant was required to submit such claim within ten days of its occurrence and to file appeals within ten days of Carrier's rejection of a previous appeal.

It is undisputed that Claimant did not comply with the foregoing provisions of Rule 24. These provisions are clear and explicit. Claimant knew or should have known of their existence. His failure to comply with them precludes this Board from accepting jurisdiction in this case.

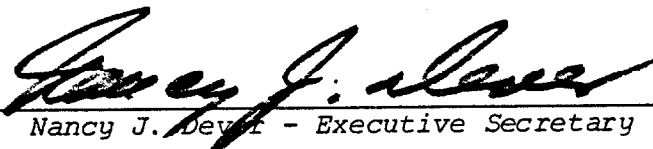
Furthermore, we note that our finding is consistent with this Board's decision in Award No. 7799. That case involved these same parties. There, too, the Claimant had failed to handle his dispute in the usual manner on the property as required by Section 3 First (i) of the Railway Labor Act and Rule 24 of the Agreement. This Board concluded therein that Claimant's failure to properly administer the claim deprived the Board of "appropriate procedural authority to consider it (the claim) within the meaning and intent of the Railway Labor Act." Stated simply, we reach the same conclusion for similar reasons. Accordingly, the claim must fail.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: _____


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of May, 1984