

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12149
Docket No. 11874-I
91-2-89-2-185

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Sheet Metal Worker James G. O'Rourke
(Southern Pacific Transportation Company
(Western Lines)

STATEMENT OF CLAIM:

That Carrier did violate the National Vacation Agreement which resulted in Claimant's loss of vacation and holiday pay for the calendar year of 1983 and loss of sickness and disability benefits provided by the Railroad Retirement Board under the Railroad Unemployment Insurance Act ("RUIA") for the fiscal year beginning July 1, 1984 to June 30, 1985;

That Claimant is entitled to be compensated for three (3) weeks' vacation pay and three (3) days' holiday pay in accordance with Claimant's originally scheduled 1983 vacation and entitled to be made whole for three (3) months railroad retirement tax credits for 1983; and that Claimant is entitled to be compensated for ten and one-half (10 1/2) months of RUIA disability benefits for the fiscal year beginning July 1, 1984 to June 30, 1985 in the amount of Five-Hundred (\$500) Dollars per each month of disability.

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 waived right of appearance at hearing thereon.

In this dispute Petitioner raises several claims which relate to vacation pay, disability benefits under the Railroad Unemployment Insurance Act, legal fees amounting to seven hundred and fifty (\$750.00), contractual wage losses due to alleged on situs unsafe working conditions and supplemental sickness benefits under the Supplemental Sickness Benefit Agreement. Petitioner submitted a detailed Ex Parte Submission to the Board dated November 8, 1989. This Submission set forth his positions with respect to each of the claimed items.

The Board takes judicial notice that on January 11, 1989, the Board issued an Award wherein it noted that predicated upon a reinstatement letter dated February 2, 1987, all claims prior to February 2, 1987 were moot. The

Board also observed as to that portion of the claim relating to the period subsequent to February 2, 1987, that Claimant was not physically able to perform the duties required of him. In the Board's concluding paragraph it wrote: "We point out that this Board does not have the authority to interpret or enforce State or Federal Statutes or regulations. Our authority is limited to interpreting or applying agreements between Carriers and their employees." See Second Division Award 11624.

In the case at bar, Petitioner filed a claim dated June 6, 1988, which was denied on grounds of untimeliness by the Carrier. The denial letter is referenced as follows:

"This refers to your letter of June 6, 1988, Certified Mail No. P709 604 006, concerning your claims 'that the Carrier violated the Controlling and Vacation Agreement(s) ..., that the Claimant be made whole for three (3) weeks earned vacation for 1983 ..., that the Claimant be made whole for sickness and disability benefits for ten and one half (10.5) months ..., that the Claimant be made whole for three (3) months railroad retirement tax credits for 1983 ..., that Claimant's compensation be exempt from California State and Federal tax ..., and that Claimant be compensated and made entirely whole ...'

In that you are represented by S.M.W.I.A., you are thereby bound by language contained within the M P & C Agreement, specifically Rule 38 (A).

In that time limits allowed for presentation of any and all claims, is well beyond the allowable (60) days, your claims are not properly before the Carrier's representative.

Rule 38(A) specifically associates a time limit which has not been met; and therefore, the claims presented in your letter are denied in its entirety."

By letter dated July 23, 1988, the above claim was amended to include legal fees reimbursement. This amended claim was denied by Carrier. Petitioner appealed the claim to the next highest officer on July 26, 1988. By letter dated August 31, 1988 Carrier denied the claim in its entirety, noting that Petitioner modified the claim at each step of the progression. However, in response to Petitioner's November 4, 1988, letter, which detailed his 1982 qualifying days for a 1983 vacation, Carrier determined that he did qualify for a 1983 vacation and he was later issued a voucher for nine hundred and eight dollars and fifty-two cents (\$908.52). The date on the voucher was March 3, 1989. There was no further response from Petitioner until Carrier received his appeals letter dated October 23, 1989. He also notified the Board by letter dated November 8, 1989, of his intention to file an Ex Parte Submission. By letter dated November 13, 1989, Carrier affirmed its prior decisions and denied his request for a conference, since he was not a designated representative of the Sheet Metal Workers' International Association.

In his appeals correspondence, Petitioner argued that since Carrier's vacation compensation offer constituted a waiver of his initial time limit, his petition was procedurally valid. He also asserted that Carrier's denial letter of March 6, 1989, extended his nine (9) month time limit to appeal to the Board to December 9, 1989.

In considering the parties positions within the context of the Controlling Agreement and particularly the claims advanced by Claimant this Board is compelled to conclude as follows:

Firstly, the initial claim filed by letter dated June 6, 1988 was untimely and not waived by Carrier's decision to later grant him 1983 vacation pay. Carrier never abandoned its timeliness position. Petitioner's progressive modification of his claim was atypical and inconsistent with the contemplated objectives of the Agreement's grievance procedures. The purpose of the grievance appellate process is not to be surprised with a new claim at each step of the process, but to give higher echelons of the appeals process the opportunity to consider thoughtfully the bona fides of the grievance carefully filed at the first step. Secondly, we must concur with Carrier that Petitioner failed to show what portion of the Agreement was violated with respect to legal fees, court costs and disability payments under statutory law. As we pointed out in Second Division Award 11624, we are not empowered to interpret or enforce state or federal statutes and thus any asserted claim under the Railroad Unemployment Insurance Act or other federal statute must be initiated in the appropriate adjudicatory forum. Thirdly, we cannot disregard the fact that a conference was not held on the property in accordance with the specific requirements of Section 152 of the Railway Labor Act. We cannot disregard the Board's decision in Award 11624, wherein the Board held, "Claim prior to and including February 2, 1987, dismissed; claim subsequent to February 2, 1987, denied."

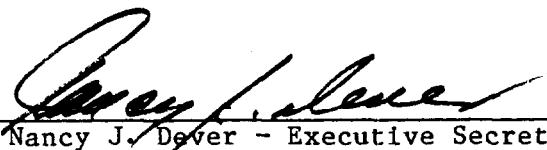
For these reasons, we find the petition improperly before the Board and accordingly we are compelled to dismiss it.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 2nd day of October 1991.