# Award No. 11169

# Docket No. TE-13307

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

William H. Coburn, Referee

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY (SYSTEM LINES)**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Spokane, Portland & Seattle Railway, that:

1. The Carrier, without just and sufficient cause, disqualified Telegrapher A. J. Schoenbechler and removed him from his regular assigned position and placed him on indefinite leave of absence.

2. Mr. A. J. Schoenbechler be reinstated to his former position with seniority, vacation and all other rights unimpaired and that he be reimbursed for all monetary loss suffered because of the violation referred to in part (1) of this claim.

**EMPLOYES' STATEMENT OF FACTS:** There is an Agreement by and between the parties hereto, effective March 1, 1946, and as otherwise amended.

A. J. Schoenbechler, hereinafter referred to as claimant, is the principal involved in this dispute. The Spokane, Portland & Seattle Railway, hereinafter referred to as Carrier, is the respondent.

Claimant, age 55, entered Carrier's service on December 12, 1943. At the time that he was unilaterally placed on sick leave (Rule 18, paragraph (d)) he had in accordance with the provisions of Rule 14(a) of the parties' Agreement accumulated in excess of 17 years' seniority rights.

As a condition of employment, employes entering service in the Telegraphers' class, as well as train service employes and some others, are required to pass a physical examination under the supervision of Carrier's Medical Director or other Carrier-designated physicians. Periodic physical re-examinations are made by Carrier on the following bases: Employes sxity (60) years of age are required to take a physical examination every four (4) years. Employes (60) to sixty five (65) every two years; sixty-five (65) to seventy (70) every year; and employes over seventy (70) every six (6) months. As heretofore stated, these examinations are conducted by Carrier-designated doctors.

In fact, no reasonable basis exists for the instant claim; and certainly no plausible explanation is apparent for Petitioner waiting until after this frivolous claim died under the "Time Limit in Claims" rule and then attempt to revive it.

Respondent respectfully requests your honorable Board to deny this claim because, as Referee Carter found in Award 1586, "the failure to appeal within the time fixed by the cut-off rule is equivalent to an acceptance of the decision of the Carrier"; or in the alternative to deny it in conformity with your established principle that you "cannot sustain claims against a Carrier without showing a violation of some rule of the agreement" (8851).

All data in support of the Respondent's position has been submitted to the Petitioner and made a part of the particular question here in dispute. The right to answer any data not previously submitted to the Respondent by the Petitioner is reserved by the Respondent.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Petitioning Organization and Respondent Carrier here are parties to a national agreement dated August 21, 1954, of which Article V, Section 1(c), reads in pertinent part as follows:

> "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 employe or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board . . ."

Petitioner concedes that the foregoing provision of the national rule was not complied with when it filed its written notice of intention to file an ex parte submission to the Third Division on March 21, 1962, nine days after the time limit had expired. It pleads "extenuating circumstance" but fails to describe these circumstances except to cite our Award 10401 (Referee Mitchell). That award is neither persuasive nor controlling in the instant case.

In view of failure to comply with the national time limit rule, this claim will be dismissed but without prejudice to the rights of the claimant to pursue any available remedies under the Railway Labor Act and the Railroad Retirement Act.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the claim is barred under the Time Limit Rule.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1963.