Award No. 11514
Docket No. DC-12826

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 465

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Local 465, on the property of the Union Pacific Railroad Company for and on behalf of Jasper Green that claimant be compensated for net wage loss and restored to Carrier's seniority roster account of Carrier dismissing claimant from service in violation of the effective agreement.

EMPLOYES' STATEMENT OF FACTS: On September 1, 1958, claimant was injured while on the job and performing his duties. Suit was instituted against Carrier resulting in trial and judgment in the amount of $15,084.65, with satisfaction filed August 5, 1959.

Claimant, after recovery from the injury in question, advised Carrier of his desire to return to work. Carrier in letter dated December 14, 1959 informed claimant as follows:

"Union Pacific Railroad Company
Dining Car & Hotel Department

"December 14, 1959

File Nos. 15-4-1,

25-4-2, 25-8-1, PR

"Mr. Jasper Green
4222 N. Haight Avenue
Portland, Oregon

"Dear Sir:

"In your recent action against the Company for personal injuries, evidence was presented on your behalf to the effect that you were permanently disabled for railroad employment and, accordingly, would never be able to return to your regular railroad occupation. On that basis, the jury returned a verdict in your favor of $15,084.65, which has been satisfied by the Company's payment of that amount.

to restore Claimant to his former employment. Since Claimant has no enforceable right to seek reinstatement, the claim is clearly without merit.

The claim in this case is barred by the failure to progress in accordance with the time limit requirements of Section 17 of the Agreement; has been affirmatively waived and abandoned by agreement with the General Chairman of the Organization representing Claimant; and in any event is totally without merit. For any or all of these reasons the claim should be denied.

The Carrier reserves the right, if and when it is furnished with the submission which may have been or will be filed ex parte by the Organization in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the Organization in such submission, which cannot be forecast by the Carrier at this time and have not been answered in this, the Carrier's initial submission.

All data used in this Response to Notice of Ex Parte Submission are of record in correspondence and/or have been discussed in conference with the Organization's representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: In 1958, when he suffered an on-the-job injury, Jasper Green was 56 years old and had been employed as a Parlor Car Attendant for fifteen years. After his September 1, 1958 injury, Green was hospitalized and did not return to work. In January 1959 he instituted a damage suit for $75,000.00 against the Carrier claiming, in part:

> "That the aforesaid sudden, unexpected and violent coupling of the defendant railroad equipment was proximately caused by the negligence of defendant and as a direct and proximate result of said negligence, this plaintiff has suffered and continues to suffer from serious, severe, progressive and permanent personal injuries to his head and neck, back, arms, and legs, nervous system and viscera which have rendered this plaintiff, sick, sore, lame and bedridden and this plaintiff has been hospitalized and he continues to be bedfast because of his injuries and plaintiff has been suffering and is now suffering from a total disability and plaintiff will suffer from a permanent partial disability for the rest of his natural life."

On July 31, 1959 the jury brought in a verdict in Green's favor and awarded him $15,084.65. Satisfaction was filed on August 5, 1959.

At the outset, and before giving any consideration to the merits of Green's claim, we must consider Carrier's contention that his grievance is barred under the time limit provisions of Rule 17. Management argues:

> 1. Rule 17(i) requires that time claims "not presented within thirty days from the date of the occurrence on which the claim or grievance is based will be barred. . . ." Here, Carrier asserts, the "occurrence" was Superintendent Draper's December 14, 1959 letter. But the Organization's claim was not submitted until January 28, 1960—more than thirty days later.
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> 2. Rule 17(l) provides that the Dining Car Department Manager's decision will be final and the claim shall be barred unless he is notified, in writing, within thirty days of his decision, that it is not accepted.

Here, Carrier asserts, Manager Hansink's decision was rendered on April 20, 1960. No written notice was submitted within thirty days indicating it to be unacceptable.

3. Rule 17(m) provides, in part, that all time claims or other grievances involved in the Department Manager's decision shall be barred unless, within six months from that decision appropriate proceedings are instituted. Here, Carrier asserts, the Manager's final decision was given at the June 24, 1960 conference. But, proceedings before the Third Division were not instituted until May 24, 1961—well over six months later.

Carrier also argues that Green's claim should be denied because it was affirmatively waived and abandoned by agreement with the General Chairman on June 24, 1960. The Organization's June 27 confirmation, Management asserts, constituted both a recognition of the validity of Carrier's position and a settlement of the pending claim.

Careful consideration of the facts in this record convinces us that the claim must be dismissed if for no other reason than that the Organization failed to submit its appeal to the Adjustment Board in a timely manner. True, there is disagreement concerning the date of Management's final decision. Carrier affirms that the June 24, 1960 settlement (confirmed by the Organization's June 27 communication) demonstrates this to be the date of final decision. The Organization implies that August 19, 1960 was the crucial date since Manager Hansink referred to the Green case in his letter of that date. Significantly, however, whichever date is accepted, it is clear that the Rule (m) requirement was not fulfilled, for May 24, 1961 (the date when the Organization submitted the case to this Board) is more than six months beyond both August 19, 1960 and June 24, 1960. Rule 17(m) is clear in providing that "time claims or other grievances involved in said Manager's decision shall be barred and deemed to have been abandoned, unless . . . within six months from the date of said Manager's decision, proceedings are instituted before a tribunal of competent jurisdiction established by law or agreement to secure a determination or adjudication of the rights of the parties."

Under these circumstances it is our conclusion that this claim must be dismissed.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 should be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of June 1963.