

Award No. 13942

Docket No. DC-14979

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Dorsey, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 516

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Local 516, on the property of the Great Northern Railway Company, for and on behalf of Waiter Robert Howelton, that he be restored to service and compensated for net wage loss with seniority and vacation rights unimpaired, account of Carrier dismissing Claimant from service on May 2, 1963, in abuse of its discretion and in violation of the Agreement.

OPINION OF BOARD: A threshold question presented here is whether this case is properly before this Board. In its initial submission Carrier urges that the case is improperly submitted by reason of the failure of the Organization to appeal within 9 months from the date of declination of the claim as required by the parties' Time Limit on Claims Agreement which, insofar as here pertinent, reads 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 employee or his duly authorized representative before the appropriate Division of the National Railroad Adjustment Board
* * *"

The instant claim was appealed to the highest officer designated by the Carrier to handle claims on May 10, 1963. That officer denied the claim on May 15, 1963. By letter dated June 3, 1964, the Organization notified the Executive Secretary, Third Division, National Railroad Adjustment Board, of intention to file an ex parte submission on the unsettled dispute — more than 12 months after denial of the claim on May 15, 1963.

Although the foregoing factual statement is not refuted by Petitioner, it is stated that since Carrier discussed the claim on its merits in conferences subsequent to May 15, 1963, with the last conference being on March 27, 1964, such conduct on the part of Carrier in effect extended the time limit. However, the record contains nothing in writing from which an inference could be drawn indicating there was any intention on the part of Carrier to extend the time limit.

This Board has consistently held that where precise time limits exist, they must be complied with unless waived by the parties, but, neither an invitation to discuss a pending case nor the actual discussion, in and of themselves, can be interpreted as time limit extension agreements. (See Awards 7000, 10347, 10460, 11597, 11777 and 12417, among others.) The claim, therefore, is barred and will be dismissed.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

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 October 1965.