NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22574
THIRD DIVISION Docket Number MS-22287

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Robert W. Woods
(
(The Long Island Rail Road Company

STATEMENT OF CLAIM: 'The Carrier violated the applicable agreement when they failed to include sick leave pay when computing my displacement allowance."

OPINION OF BOARD: For some years Claimant was employed by Carrier in the position of Usher. On March 1, 1976 a reorganization of forces took place in which a number of ushers, including Claimant, were adversely affected. Claimant was displaced effective March 1, 1976 and received thereafter a monthly displacement allowance under the terms of the Agreement between the parties dated April 1, 1964. The amount of displacement allowance is calculated on the basis of a "test period" comprising the 12 month period prior to displacement (in this case March 1, 1975 to March 1, 1976).

After receiving his displacement allowance commencing May 1976 and monthly thereafter Claimant wade no complaint until February 28, 1977 when he wrote to Carrier's Superintendent-Personnel Management asserting that his test period figures had been miscalculated and that his displacement allowance therefore was less than it should be. Specifically, Claimant maintained that the sum of $997.00 received by him sometime in March 1975 should have been included in his test period earnings. It is undisputed that the $997.00 was paid to Claimant for the period September 9, 1974 to November 6, 1974 while he was absent from duty due to a nervous disorder for which he admitted himself to a hospital for the *mentally* ill. Carrier maintains that the particular illness in question was not covered by the Sick Leave Agreement but Carrier and the Organization nonetheless reached an accommodation by which Claimant was allowed some sick leave benefits for that absence. In his complaint filed February 28, 1977 Claimant asserted that the $997.00 thus received should be counted as earnings during his test period.

Carrier's Superintendent-Personnel Management responded on April 5, 1977 to Claimant's complaint, advised him that the $997.00 had no relationship to the test period earnings and suggested that further inquiries be directed to the payroll department. Sometime in May 1977 a further discussion was had between the Organization and Carrier representatives concerning Mr. Wood's *test* period figures. Under date of June 6, 1977 Carrier President notified the Organization that the $997.00 could not be included in the test period earnings. There was no further handling of this matter on the property.

Under date of September 26, 1977 Claimant filed notice of intent to file ex parte submission on a "dispute" identified as follows:

> 'The Carrier violated the applicable agreement when they failed to include sick leave pay when computing my displacement allowance."

At oral argument on this case Claimant asserted in addition that his pension was not properly calculated. Of course this last point is completely de novo and was never raised on the property.

We have reviewed this matter with care and conclude that this "claim" must be dismissed on procedural/jurisdictional grounds. Claimant's letter of inquiry of February 28, 1977 was answered and his request for inclusion of the $997.00 was denied in April 1977, but at no tine did he file a claim or grievance. Even if arguendo the February 28, 1977 letter of inquiry was considered a grievance (and we are not persuaded that it was) it was fatally out of time under the time limit provisions of Rule 7-A-2 and 4-D-l of the controlling agreement. Whether on the basis of untimeliness or of failure to progress a claim through the appeal procedure on the property, we are jurisdictionally barred under Circular No. 1 and Section 3, First (i) of the Railway Labor Act from handling this case on the merits. See Awards 18640 and 21373.

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 the claim is jurisdictionally and procedurally barred.

A W A R D

Claim dismissed for lack of jurisdiction.

RATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1979.