

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23095
Docket Number MS-23079

A. Robert Lowry, Referee

PARTIES TO DISPUTE: (Darrell Claiborne
(National Railroad Passenger Corporation

STATEMENT OF CLAIM: This office represents Darrell Claiborne, a former Amtrak employee. This letter is to serve notice, as required by the Rules of the National Railroad Adjustment Board, of my client's intention to file a submission within thirty days from date of this notice, covering an unadjusted dispute between Mr. Claiborne and his former employer, Amtrak.

The specific question involved is whether or not Mr. Claiborne was terminated from his employment with or without just cause and, whether or not the hearing leading to his termination was fair and impartial.

The facts involving Mr. Claiborne's termination involved alleged charges of immoral conduct for a passenger on an Amtrak train.

OPINION OF BOARD: This claim is faulted with a procedural defect.

The Claimant was alleged to have made sexual advances to a young female passenger on board Amtrak Train 11 on April 24, 1977. Charges were filed and an investigation held on the charges on May 5 and 9, 1977. The Carrier found Claimant guilty as charged and dismissed him from its service effective May 18, 1977. The Organization appealed through the agreed-upon appeal procedures to the highest officer designated to handle such matters on August 29, 1977, when Mr. C. L. Dellums, Vice Chairman of the Amtrak Service Workers Council, met with Mr. G. F. Daniels of the Carrier and pleaded for Claimant's reinstatement. The appeal was denied by the highest officer in conference and confirmed by letter on September 20, 1977. This decision was not appealed to this Board until May 25, 1979, when Claimant's attorney so notified the Board, twenty (20) months after the final decision was made on the property.

Rule T (d) of the Agreement between the parties reads in part as follows:

"Any appeal from the decision of the Director of Labor Relations must be made to a proper tribunal, as established under the provisions of this agreement, within ninety (90) days of the date of such decision."

Claimant's attorney in his brief pleads ignorance of the rule which **cannot be** accepted by this Board. **He** also contends **Claimant was** not notified by Carrier of the final decision of September 20, 1977. **Rule T (d)** clearly provides that the **Claimant** "or his duly accredited representative" **may make** appeals to the Director of Labor Relations who was, at the time the Agreement was signed, the highest office designated to handle such matters. Mr. **Dellums** was Claimant's "duly accredited representative" who had the right under the Agreement to **make** the appeal in behalf of the Claimant. In accordance with existing procedures Mr. **Daniels** confirmed the decision wade in conference on August 29, 1977, by letter on September 20, 1977 to the Chairman of the Amtrak Workers Service **Council with** copy to the Vice **Chairman, Mr. Dellums. There** is no requirement in the rule to give the Claimant a copy of the decision letter when ha did not **make** the appeal himself.

A hearing was held by the Board on October **14, 1980** with this **Referee** present but neither party was represented.

It is clear to this Board that Claimant failed to notffly the Carrier **of his** intention to appeal the decision of September 20, 1977 within the **agreed-** upon **time** Limit of ninety (90) days. Thus, the **claim** is in default under the time limit rule and should 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 **Employees** involved in this dispute are respectively Carrier and **Employees** 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 tine limit rule.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1980.