

NATIONAL ~~RAILROAD~~ ADJUSTMENT BOARD

THIRD DIVISION

Award Number **23466**  
Docket Number MS-23368

Martin F. Schei-, Referee

PARTIES TO DISPUTE: (Wayne J. Calvert  
{  
~~Consolidated~~ Rail Corporation  
and  
[National ~~Railroad~~ Passenger Corporation

STATEMENT OF CLAIM: "This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an **ex parte** submission on February 15, 1980 covering an unadjusted dispute between me and the National Railroad Passenger Corporation (Amtrak), and Consolidated Rail Corporation (Conrail) involving the question:

Was the petitioner in violation of the Letter Agreement, signed on July **19, 1976** between the Consolidated Rail Corporation (Conrail), the National Railroad Passenger Corporation (Amtrak), and BRAC which states, in part (2nd paragraph) - 'That employees returning **from** disability, etc., have five working days following their return to active service with **Conrail** to exercise seniority to an available position **on** Amtrak, if they so desire.', attempting to return to duty following an illness?"

OPINION OF BOARD: Claimant, Wayne J. Calvert, was on medical leave of absence from Conrail February 23, 1973 through May 19, 1977. At the time his leave was granted, Claimant was an Assistant Agent at **FACTerminal**, Baltimore, Maryland. By May 19, 1977, when Claimant was found qualified to return to work by the Conrail Medical Department, the facility at which Claimant wished to work had been assumed by Amtrak. Claimant sought to exercise seniority pursuant to the July 19, 1976 Implementing Agreements and Letter of Understanding ("Agreements") in order to transfer to Amtrak. In furtherance of Claimant's desire to work, Claimant contacted W. J. Kendig, Supervisor, Operating Rules, on June 21, 1977 and informed him of his intention to displace the 11:30 p.m. to 7:30 a.m. position at **Perryville** Tower. On June 27, 1977, Amtrak District Manager of Labor Relations, D. W. Napier, notified Kendig that Claimant should not be permitted to make a **displacement** on Amtrak since Claimant had not complied with the time limits in the Agreements. Claimant ultimately filed a notice of intent to file an **ex parte submission** on January 15, 1980.

Claimant asserts that his dispute is timely filed since the Agreements fail to specify a time ~~frame~~ for appeals to this Board. ~~The~~ Carriers, on the other hand, assert that Claimant's grievance was not timely ~~nor~~ was it properly progressed on the property.

The contractual provision for progressing grievances is stated in Rule 5-A-1 of the **agreement** between Amtrak and the Organization (TC Division). Rule 5-A-1 states, in relevant part:

**RULE 5-A-1 -- CLAIMS FOR COMPENSATION**

(a) All claims or grievances must be presented in writing **on** behalf of the employe **involved**, to the designated officer of the **Corporation** authorized to receive same, within sixty (60) days **from** the date of occurrence **on** which the **claim** is based, except:

(1) **Time** off duty on account of **sickness**, vacation, leave of absence, suspension or reduction in force, will extend the time limit specified in paragraph (a) of this Rule by the period of such time off duty.

(2) **When** a claim for compensation alleged to be due is based on an occurrence during a period **employe was** out of active service due to sickness, vacation, leave **of** absence, **suspension** or reduction in force, it must be made, in writing, within sixty (60) calendar days **from** the date the employe **resumes** duty.

(b) A claim **or grievance denied** in accordance with Paragraph (a) shall be considered closed **unless** it is listed for discussion **with** the designated **officer of** the Corporation by the employe or his duly accredited representative within sixty (60) days after the date it was denied. A claim or grievance listed ten (10) days prior to the date of a scheduled **monthly** meeting with the local **Committee** will be discussed at such meeting. When a claim or grievance is not allowed the designated officer of the Corporation will so notify, in writing, whoever listed the claim **or** grievance (employe or his duly accredited representative) within sixty (60) days after the date **the claim** or grievance was discussed of the reason therefor. **When** not so notified, the **claim** will be **allowed**.

(e) Upon completion of a Joint submission or **Ex Parte** Submission, the employe, the General **Chairman** or the Director-Labor Relations **may** list the case for discussion at a scheduled system meeting. All such **submissions** listed ten (10) days prior to the date of a scheduled system meeting will be placed on the docket for discussion at such meeting.

(g) A claim or grievance denied in accordance with **Paragraph (f)** will be considered closed **unless** within one (1) year **from the** date of the decision of the **Director-Labor Relations** proceedings are instituted before the National **Railroad** Adjustment Board or such other Board

"as may be legally substituted **therefor** under the Railway Labor Act."

There is no evidence in the record to indicate that Claimant followed the procedures of Rule 5-A-1 to progress a **claim** on the property. For this reason alone, the grievance should be denied. However, even if Claimant had progressed his claim on the property, Claimant **was untimely** in bringing this dispute before this Board.

Assuming, for the **moment**, that Claimant is given the benefit of **all** possible time delays arising from equivocal correspondence with Carriers, it is nevertheless clear that by **November 29, 1977**, when Claimant wrote to the District Manager of Labor Relations and **Personnel** to request help, Claimant knew that the Organization had denied his claim and that Carriers also took the position that he had failed to comply with the time limits for making a displacement. Thus, even if Claimant were to have waited two months for a reply to his November **29th** letter, by February **1978** a reasonable person in Claimant's position would know that no answer to his letter was forthcoming. Even if Claimant had then assumed that it would be futile to process his claim to the Chief Operating Officer of Carrier, Claimant did not bring his claim before this Board in a timely manner since he waited until January **1980** to file with this Board.

Article **7** of the Implementing Agreement provides:

"Any dispute or controversy with respect to the interpretation, application, or enforcement of the provisions of this **Agreement** which has not been resolved within **90** days may be submitted by any of the parties to an Adjustment Board for a final and binding decision thereon **as** provided in Section **3**, Second of the Railway Labor Act, in which event **the** burden of proof on all issues 50 presented shall be upon Amtrak and/or Conrail, as the case may be."

Article **7** does not specify a **time limit** within which disputes must be presented to an Adjustment Board. Nevertheless, the Rules of this **Board** (Circular No. 1) provide, in relevant part:

"**The** disputes between an employee or group of employees and a carrier **or** carriers growing out of grievances or out **of** the interpretation **or** application of agreements concerning rates of pay, rules, or **working** conditions, . . . shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but failing to reach an **adjustment** in this matter, the disputes may be referred by petition of the **parties** or by either party to the appropriate division of the **Adjustment** Board with a full statement of the facts and all supporting data bearing upon the disputes.

"No petition shall be considered by any division of the Board unless the subject matter has been handled in accordance with the provisions of the Railway Labor Act, approved June 21, 1934." (emphasis added)

Similarly, the Railway Labor Act provides, in pertinent part:

"The disputes between an **employee....and** a carrier or group of carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working **condiditions...shall** be handled in the usual-et u to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment **in** this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full stat-t of the facts and all supporting data bearing upon the disputes." (Section 3, First **(i)**, emphasis added.)

When, after consulting the Rules of this Board and the Railway Labor Act to which **Claimant** is referred, a definitive answer on time limits **cannot** be **found**, it is logical for the **Claimant** to turn to the collective bargaining agreement between the parties. As indicated previously, Rule 5-A-1 establishes the time **limits** for the presentation of grievances. That rule provides that a claim is **deemed closed** unless within one year **from the** date of the decision of the Director-Labor Relations an appeal is filed with this Board.

Thus, even if this Board were to **assume** that by February 1978 Claimant had pursued his claim "**in** the usual manner" to the chief operating officer of the Carrier designated to handle disputes, Claimant still did not pursue his claim to this Board in a timely manner, that is, within one year **from** the denial of his claim by **Carrier**.

This Board is very sensitive to the **sometimes** difficult road an individual must travel **in seeking** redress of a grievance. Nevertheless, we cannot ignore the time limits within which grievances must be pursued, or the procedures designed to resolve disputes on the property. To do so, would defeat the purposes of the Railway Labor Act and would effectively rewrite the Agreements between the parties. This, of course, we cannot do.

Since this grievance was neither progressed on the property nor brought before this Board in a **timely manner**, this Board has no choice but to **dismiss the grievance**. In light of this **decision**, we need not rule on the other issues presented in the Ex Parte Submissions.

**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 **•** pprwed June 21, 1934;

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

The grievance was not timely filed **with** this Board.

A W A R D

Claim dismissed.

NATIONALRAIROAD ADJUSTMENT BOARD  
By **Order** of Third **Division**

Attest:

  
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1981.