

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 28077  
Docket No. MS-28414  
89-3-88-3-199

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

(John Price  
PARTIES TO DISPUTE: (  
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

"Is John Price entitled to retroactive wages and benefits for the period of forty-two months (from January, 1984 to June, 1987) due to a decision by the Chicago and Northwestern to keep him out of service against his wishes due to incorrect allegations that John Price was medically (sic) unfit to work?"

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

In November 1983, Trackman John Price, the Claimant in this case, was hospitalized with a heart problem. Upon his release, he returned to work for two days, but was told to cease working until his medical status could be cleared up. Claimant was ultimately returned to work in June 1987. This claim is for retroactive wages and benefits for the forty-two month period during which Claimant alleges he was fit to return to duty, but was not allowed to do so.

In its Submission to this Board, Carrier maintains that the claim should be dismissed for lack of jurisdiction because of Claimant's failure to present the claim on a timely basis or present it to the proper Carrier Officer, in compliance with the provisions of Rule 21 of the Controlling Agreement.

The Claim was sent to an individual who was not the Carrier Officer designated to handle claims and grievances for employees represented by the Organization. On this basis alone, the Board must agree that the claim is not properly before us, since we are limited by Section 3, First (i) of the Railway Labor Act from considering claims under such circumstances.

Even if we were to consider it, however, we would have to conclude that backpayment would not be warranted. Claimant seeks payment in accordance with Rule 56, which calls for the use of a third physician when there is a conflict between Carrier's doctor and the employee's doctor. The Rule grants compensation for the time the individual was improperly disqualified. In the present case, Rule 56 was not invoked until the period just prior to the time Claimant was returned to work and there is no evidence that Claimant was improperly disqualified.

The record shows that a number of medical problems surfaced during the forty-two months at issue here. Carrier had the right to determine whether any of these problems prevented him from resuming work.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 11th day of September 1989.