

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

(John T. Finnegan
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Item 1 - According to my detailed letter, dated March 28, 1985, addressed to Mr. F.C. Kublic, Manager-Labor Relations, nineteen (19) sick days compensation should be paid me, as detailed in attached exhibit A, listing actual days and amounts. (Exhibit A has been omitted for this 'INTENT NOTICE'.)

Item 2 - The actual amount listed in item 1 should be added to by the local, current, prevailing, interest (the dates and amounts listed on exhibit A), up to the time of payment, because this is an out-of-pocket expense to me.

Item 3 - Time limits were NOT observed by Conrail, as they failed to comply with Rule 38(g), and Rule 45.

Item 4 - The amount of sick days allowed should be adjusted as per Rule 38(n)."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 waived right of appearance at hearing thereon.

The original Claim in this dispute was dated March 28, 1985, and dealt with alleged underpayment of sick leave upon Claimant's impending retirement. In due course the Claim was listed for conference with Carrier's highest Appellate Officer, by letter dated January 6, 1986. By letter dated February 28, 1986, Carrier wrote indicating that its records showed an overpayment of sick days (rather than the underpayment alleged), but that in accordance with the rules the overpayment would not be recovered. Nothing further was done for some 18 months when a verbal request was made to recalculate the figures. Further, on January 18, 1988, the Claim was amended in several important aspects. In addition, there was no agreed statement of facts determined by the parties.

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The Claim herein must be dismissed as procedurally defective. Its handling was not in accordance with Rule 45 (g). In addition, the Claim presented herein is not the same Claim as that handled on the property. Thus, the Claim was not handled as required by the Statute. Section 3, First (i) of the Railway Labor Act requires that Claims must be handled in the usual manner - in accordance with the Agreement; in this dispute that was not in the case. It must also be observed that Claimant did not meet his burden of proof in this matter to establish any possible violation of the Agreement.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois this 20th day of November 1989.