

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28912
Docket No. MS-29045
91-3-89-3-470

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Robert H. Cox
(
(CSX Transportation, Inc. (former Seaboard Coast Line)

STATEMENT OF CLAIM:

"#1. I qualified for Employee's Supplemental Retirement Plan September 1, 1966 - card membership #1778 with Seaboard Air Line Railroad. I desire this Award.

#2. My monthly guarantee of \$985.00 per month beginning October 1970 when I became first adversely affected. I desire this Award retroactive to October 1970.

#3. Moving expenses, transfer expenses and away from home expenses account instructed to exercise my seniority, after completion of work September 30, 1970. I desire this Award.

#4. Also request the Board to consider a fair amount of compensation on a monthly basis beginning October 1970 through the month I choose to retire due to punitive damages, embarrassment, mental anguish account instructed to exercise my seniority without any explanation.

#5. Also request the Board to consider a fair amount of compensation on a monthly basis beginning October 1970 until corrected account not having rights and privileges the same as Officers regarding insurance, purchasing CSX Stock and Etc."

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 were given due notice of hearing thereon.

Claimant is employed as an Agent at Carrier's facilities in Georgetown, S. C. In October 1989, Claimant served notice with the Board that he intended to pursue the above-cited Claim on his own. This Claim has been reviewed by Carrier Officials, as well as handled through the grievance appeals procedure within the Organization. Both the Organization and Carrier have instructed Claimant that his dispute is untimely filed and that the doctrine of laches undermines the merits of his Claim. Carrier has also denied the Claim on the basis that it is in the wrong forum. If it was considered on the merits, however, Carrier also contends that it would not stand.

This Board has reviewed the record presented and the statements made at the Referee Hearing. Based on that review, we conclude that Claimant was given the proper advice when he was told by his Organization Representative that his Claim was untimely filed.

This Board has no authority to decide otherwise. We have in the past reviewed similar Claims involving the Orange Book Agreement, with Referee Criswell presiding. We quote from that Award:

"It appears to this Board that an unreasonable length of time expired from date of the Orange Book Agreement in perfecting these claims. A very basic purpose of the Railway Labor Act was to provide for prompt disposition of disputes between the carriers and their employees. When the rights conferred by this Act are delayed for an unreasonable time, preventing prompt disposition of disputes, the purpose of the Act is destroyed. . . ."

Those words apply equally as well to this Claim.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of August 1991.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Serial No. 349

INTERPRETATION NO. 1 TO AWARD NO. 28912

DOCKET NO. MS-29045

NAME OF EMPLOYEE: Robert H. Cox

NAME OF CARRIER: CSX Transportation, Inc. (former Seaboard Coast Line)

As background, this Board issued Award 28912 on August 29, 1991. Therein the Board noted that both the Organization and the Carrier had instructed Claimant that his dispute (seeking various amounts of compensation and other considerations commencing in October 1970) was untimely filed with the Carrier and that the doctrine of laches undermined the merits of his Claim.

The Board concluded that the Claimant was given the proper advice when he was told by his Organization Representative that his Claim was untimely filed.

Subsequent to the issuance of said Award, the Claimant filed suit in United States District Court for the District of South Carolina appealing the decision of the Board based on the specious contention the Board did not conform to its own procedures in adjudicating his claim.

While the Court recognized at Page 2 of its ORDER that the Board:

"...concluded that Cox's petition was barred by laches and therefore dismissed it..."

the Court nevertheless, determined that the decision of the Board was ambiguous in whether it followed its own procedures. The basis for such decision was the sentence:

"This Board has no authority to decide otherwise."

which just happens to follow the paragraph which states that Claimant was informed by his Organization Representative that his claim was untimely. The Court remanded the matter to the Board for further proceedings including a rehearing, if necessary.

Preliminarily, an Interpretation of an Award may not be properly treated as a rehearing or a new trial of the merits of the case.

In our view, contrary to the opinion of the Court, the

language of Award 28912 is clear and unambiguous. There is no genuine necessity for further clarification.

That said, however, so as to satisfy the Court's ORDER, the Board categorically reaffirms that we find no reason to disturb our earlier findings.

The Organization decided against appealing the matter to this Board because it agreed with the Carrier's interpretation, i.e. that the Claim was untimely filed with the Carrier and that the doctrine of laches applied. The Claimant, when so informed by the Organization, refused to accept the decision of not only the Carrier, but also the decision of the Organization not to go forward. The Organization explained to Claimant its reasons for not carrying the case further. In spite of such advice, the Claimant filed a Notice of Intent to make an Ex Parte Submission to this Board.

We emphasize that the Carrier and the Organization were in harmony with respect to the lack of merit of the claim. Therefore, in keeping with a long line of Awards of all four Divisions of this Board, we adhered to the principle that where the parties signatory to the Agreement are in accord as to its application, claims to the contrary submitted by individuals must be denied. While an employee has the right to contest a particular Rule's application, it is difficult to prevail if the signatory parties unequivocally agree on a different interpretation. For us to have concluded otherwise would have been an unwarranted usurpation of the collective bargaining process. The Carrier amply proved that the Claim was untimely filed and barred from further progression by the doctrine of laches. The Organization which negotiated and administers the Agreement concurred with this view. An affirmative award, therefore, was not warranted on the Claim asserted herein. As urged by the Carrier, the phrase "...no authority to decide otherwise..." means that this issue was foreclosed by controlling Board precedent. See First Division Awards 23083, 23044; Third Division Awards 27454, 26758; and Fourth Division Award 4891.

Referee Rodney E. Dennis, who sat with the Division as a neutral member when Award 28912 was adopted, also participated with the Division in making this Interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 2nd day of December 1993.