

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31293
Docket No. MW-31772
95-3-94-3-54

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier improperly withheld Mr. V.K. Brickus from service on April 13, 1992 and continuing without just and sufficient cause (System Docket MW-2634).
- (2) The claim as presented by Vice Chairman C.T. Burkindine on June 9, 1992 to Division Engineer R.J. Rumsey shall be allowed as presented because said claim was not disallowed by Division Engineer R.J. Rumsey in accordance with Rule 26(a).
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, the claim shall be allowed as presented in accordance with the provisions of Rule 26(a)."

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 employee 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.

Claimant underwent a return to work physical March 9, 1992. The contract doctor deferred certification to Carrier's Chief Medical Officer. That office on April 22, 1992, set four restrictions governing Claimant's return to service.

On April 29, 1992, the Division Engineer wrote Claimant advising that with the restrictions placed upon his resumption of services, it was not possible for him to return to work.

In a letter dated June 9, 1992, presented on June 12, 1992, to the Carrier Official authorized to receive claims and grievances in the first instance, a claim was filed in Claimant's behalf seeking compensation from April 13, 1992, until the matter was resolved.

On September 5, 1992, the Organization appealed the claim contending that the first Carrier Officer failed to respond timely to the claim and the Organization was demanding payment under the time limit on claims Rule.

The first Appeal Officer declined the claim solely on the merits, ignoring the procedural argument entirely.

On final appeal, the Carrier Officer who responded stated that even though the claim was timely declined on August 3, 1992, the Organization's claim was void ab initio in that the date of occurrence was March 9, 1992, and the claim presented on June 9, 1992 (actually presented on June 12, 1992) was beyond the 60 day time limit set forth in the Time Limit on Claim's Rule. Under the circumstances Carrier's response and/or handling thereof was immaterial.

The Organization's response was that Claimant was not deprived of earnings until April 13, 1992, thus a claim for compensation lost on any date prior thereto was not possible.

A review of the original claim that was not responded to is the one that will be sustained, in full, if the procedural argument of the Organization is upheld. If the Carrier's position is correct, the claim before the Board will be dismissed.

A review of the original Claim finds the Organization disagreeing with the Division Engineer's determination that with the limitations placed upon Claimant's resumption of duties that he was being denied an opportunity to return to work. There was nothing said about the contract doctor's decision to defer certification to the Carrier's Medical Department.

Therefore, it would appear that the claim was based on the April 29, 1992 letter yet the claim for lost compensation was retroactive to April 13, 1992, when the Claimant had no inclination as to the Division Engineer's decision.

Furthermore, the Organization's post conference letter of June 4, 1993, begins by stating:

"*** The case involves lost earnings on account the Carrier failed to permit Claimant to return to duty on March 9, 1992 for alleged medical reasons. ***"

It is the opinion of this Board that the claim started to run on March 9, 1992. A claim for time lost should have been presented no later than May 8, 1992. It was not. The claim before the Board is invalid.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of January 1996.