

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32270
Docket No. MS-32259
97-3-95-3-71**

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

**(Delbert H. Carlson
(
PARTIES TO DISPUTE: (Duluth, Missabe and Iron Range Railway
(Company**

STATEMENT OF CLAIM:

“This is to serve notice, as required by Uniform Rules of Procedure of the National Railroad Adjustment Board effective May 16, 1994 of (my) Delbert H. Carlson intention to file an Ex Parte submission within 75 days covering an unadjusted dispute between (me) Delbert H. Carlson and the Duluth, Missabe & Iron Range Railway Company, involving the following:

- 1. To restore Loss of Job Protection Days based on failed to respond 17 times in the year 1986.**
- 2. I was told at the time that my Protection days covered the full roster on the Ore Docks an (sic) now the company has started basing it on the individual instead of the full seniority roster.**
- 3. Conflict between Federal Law on Unemployment and company's extra board. The Law requires me to seek work and accept it if possible, which I did. Which does not leave a person a chance to respond everytime called.**
- 4. At the same time in question there was another case involving one John Stephen who missed about the same number of days. The company did inform him that his Job Protection days were restored.**
- 5. The main reason I never appealed the case at the time was according to Job Protection Mediation Agreement Case No A-7128,**

it states in section 1 that when a employee would be dismissed from the Protected Board, he would be restored on reinstatement to full service.

6. The company's interpretation of Mediation Agreement Case No A-7128 Article 11 Section 1 is dismissed for cause only means you have been fired. My interpretation is if you are dismissed from the Protection Board for reason beyond your control like having to seek work according to Federal Law, you would be reinstated on return to full service."

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 were given due notice of hearing thereon.

Claimant was a furloughed employee of the Carrier who, according to the facts of record as well as Claimant's candid acknowledgment, failed on numerous occasions to accept extra work which was available to him. This failure by Claimant caused the termination of his employment protection benefits. By letter dated January 26, 1989, Carrier notified Claimant's representative of this fact. No timely appeal was taken from this action.

Subsequently, by letter dated January 4, 1995, Claimant initiated a claim for reinstatement of his employment protection benefits. This claim was presented to Carrier's first-level manager who denied the claim on January 26, 1995. No appeal of this denial decision was taken.

It is clear from the record of this case that this claim is barred for two reasons. First, the claim as initiated in January 1995 was, following the initial denial, never pursued through the normal claim procedure on the property as required by the Agreement. It is, therefore, barred from further handling on that basis. Additionally, the lapse of time from Carrier's initial action of terminating Claimant's protective status in January 1989, until his initial claim in January 1995, is an inexcusable delay in presenting the dispute and does not permit further handling by this Board. The principle of laches demands that this dispute must be, and is hereby, dismissed.

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 7th day of October 1997.