

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36989
Docket No. MS-37880
04-3-03-3-198

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

PARTIES TO DISPUTE: (Gary H. Colbert
(CSX Transportation, Inc. (former Baltimore and
(Ohio Railroad Company)

STATEMENT OF CLAIM:

"They fired me on October 9, 1996 for being absent on October 3rd and 4th, 1996 without permission from proper authority. I was in a treatment center (Hidden Brook), which the EAP helped me to get into, from September 13, 1996 to October 4, 1996. The letters sent to me for failing to report to work were dated and sent while I was in inpatient treatment, and I never received them. Inadvertently, the EAP did not notify my employer of my whereabouts and inpatient treatment. I was not allowed to use the telephone or communicate with the outside during my treatment.

As to the charge that I failed to comply with EAP plans, I did so to the best of my ability. I took urine test, which were [sic] negative. The time I missed were [sic] due either to bad weather or personal illness. I have rehabilitated myself and want my job back with CSXT (Railroad)."

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.

The Claimant asserts that his October 9 dismissal for being absent without authority immediately followed his October 4, 1996 release from inpatient status at the Hidden Brook Drug and Alcohol Treatment Center. He contended that the Carrier's EAP staff had arranged treatment and then failed to notify the Maintenance of Way Department of his whereabouts. He emphasized that because he was not permitted communication with the outside world, he was unable to contact his supervisor or to retrieve the Carrier's multiple letters of warning and notification advising of assessment of discipline resulting from continued absenteeism without proper authority.

On May 20, 1997 - some seven months after notification of his dismissal - the Claimant requested restoration to the seniority roster. His request was rejected with advice that his appeal had been filed outside the 60 day time limit provision set forth in Addendum 14. Article 5 thereof reads, in pertinent part, as follows:

"(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. . . ."

The Claimant made subsequent appeals, making the point that he had not received correspondence from the Carrier due to his inpatient treatment at the Hidden Brook Treatment Center. His appeals were denied on basis of untimely filing.

The Claimant turned, at last, to the Board by filing a Notice of Intent letter dated August 4, 1998. Oddly enough, the Notice of Intent was not received by the Board until May 6, 2003.

The Carrier advances the argument that presentation of the instant claim has been made well outside the time limits established for instituting proceedings before the Board, and the Board lacks jurisdiction to resolve this dispute based either on procedure or merits. The Carrier relies, once again, on Addendum 14, which reads, in pertinent part, as follows:

“(c) . . . All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer’s decision proceedings are instituted by the employee or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. . . .”

In the opinion expressed by the Carrier, if the Board is somehow able to get past the procedural irregularities, the Board must deny the claim on merits. It points out that the Claimant was, after all, absent without leave, and he failed to respond to multiple letters of warning and discipline, the earliest of which was dated on or about June 20, 1996.

The Board lacks authority to over turn the Carrier’s determination. Such is true because after having his claim denied on November 11, 1997, by the Carrier’s highest designated officer, the Claimant waited until May 2003, i.e., almost six years later to advance his claim to the Board. Even if the Claimant had appealed to the Board on August 4, 1998, as suggested by his letter dated August 4, 1998 (which, as noted above, was not received by the Board until May 2003) his untimely filing may have been more pardonable, but it would still have been outside the time limits of the parties’ Agreement.

Under the circumstances, this claim must be 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 12th day of May 2004.