

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37007
Docket No. MS-36853
03-3-01-3-411

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

(Dennis O. Riga

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

“The removal of my self-disqualification which took effect on July 2, 1999 for suitability for all agreement-covered customer service positions which are in the New York Metropolitan Division (New Rochelle, N.Y. to Trenton, N.J.) and restoration of all monies that may be due to me from this self-disqualification.”

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 entered service in October 1975, and held various positions within the Customer Service Department. In an informal meeting on July 2, 1999, the Claimant, the Carrier and the Organization mutually agreed that the Claimant would be disqualified from future customer service positions based upon his rude

and discourteous behavior with the traveling public, conduct for which he had previously been dismissed and returned by the Carrier on a leniency basis. The Claimant was permitted to exercise his seniority to a Mail Handler position, which he did on July 7, 1999. Thereafter, the Claimant filed a grievance concerning certain documentation relied upon by the Carrier for this disqualification on July 21, 1999, which was denied by the Carrier on August 4, 1999.

A new Organization representative not involved in the July 2, 1999 Agreement filed a claim on January 22, 2000 in response to the Carrier's refusal to allow the Claimant to displace into a Customer Service position on January 6, 2000, stating that the Claimant had not signed the July 2, 1999 disqualification Agreement. That claim was denied on March 3, 2000, noting both Claimant's Agreement to the disqualification and the Carrier's continued acts of leniency in permitting the Claimant to remain employed despite his continued discourteous conduct. The claim was conferenced on May 11, 2000. The Carrier denied it again on June 7, 2000, noting that it was untimely as a resurrection of the Claimant's prior grievance. The Organization's appeal was discussed on August 17 and the Carrier issued its final denial letter on October 5, 2000.

By letter dated June 6, 2001, the Organization notified the Claimant that it was not pursuing this matter to arbitration due to its belief that it lacked merit. It attached a copy of the Carrier's October 5, 2000 denial, as well as the Board's Uniform Rules of Procedure, informing the Claimant of his right to progress this claim to the Board within 30 days of the date of the letter. The Claimant's Notice of Intent is dated August 10 and was received by the Board on August 13, 2001.

Without reciting the positions of the parties with respect to the merits of this claim, a careful review of the record convinces the Board that it must be dismissed as untimely. The Rules clearly provide that a claim must be filed with the Board within nine months of its final denial on the property, herein October 5, 2000. The Organization gave the Claimant notice that he needed to progress this claim to the Board within 30 days of June 6, 2001 in order to be timely and provided him documentation to aid in this effort. The Claimant failed to meet the time limit for progressing this claim to the Board, which requires that it be dismissed.

However, even if the Board were to consider the merits of the claim, it is clear that the Claimant was disqualified on the basis of his discourteous behavior to the riding public, which he admitted in his written Submission. The Carrier again granted him leniency by permitting him to remain employed in positions outside the Customer Service area, a disqualification he obviously agreed to when he exercised his seniority outside that Department in July 1999. He never complained of such disqualification Agreement at the time, and we cannot say that it was unreasonable under the circumstances. Thus, there is no merit to the instant claim seeking to overturn such Agreement. If the Claimant wishes to have his qualifications reviewed in the future, he should consult and work with the Organization's assistance to provide information to the Carrier for its consideration concerning the possibility of his re-qualification for Customer Service positions.

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 18th day of May 2004.