

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37083
Docket No. MS-37473
04-3-02-3-569

The Third Division consisted of the regular members and in addition Referee Joshua M. Javits when award was rendered.

(Martin Flores

PARTIES TO DISPUTE: (

(Northeast Illinois Regional Commuter Railroad (Metra)

STATEMENT OF CLAIM:

“In April 2001, I was on an early break, in the trainmen’s room taking a brief nap. As a result, the above-mentioned carrier, Metra Railroad terminated me from my position as Station Manager without due process. During that time I was undergoing personal, marital problems and did not have a permanent residence. Consequentially, I was living out of my car, resulting in many sleepless nights, which is why I was sleeping in the trainmen’s room. I did not want to risk losing my job, which is why I strived to make it to work on a daily basis, despite my personal troubles. Having been a dedicated employee for 12 years, I feel I deserve a hearing to present my case.

I am requesting that I be reinstated to my position as Station Manager, along with full benefits and seniority. Also, that I receive the pay that I would be receiving currently, had I never been released from employment (which would include any Cost of Living Adjustments, 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 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 was formerly employed by the Carrier as a clerical employee until his dismissal on April 27, 2001. The Claimant was initially dismissed by the Carrier on February 8, 2001 for "failure to protect [his] assignment as Station Master, Position #100 (with hours of assignment from 6:30 a.m. until 3:30 p.m. and rest days of Saturday and Sunday) when on Thursday, February 01, 2001 [he] did not report for work, and as indicated by call board records, [he] did not lay off for the day." In his February 8, 2001 Waiver of Formal Investigation, the Claimant accepted "full responsibility for the incident as indicated and agree[d] to the discipline assessed" that included admitting a violation of: Metra Employee Conduct Rules, Item II, General Notice, paragraphs 2, 3, and 4; Item III, General Rules, Rule B, paragraph 1; Rule N, paragraph 3, Item No. 2; Rule Q, paragraph 1; Customer & Station Services Bulletin No. 4, Item No. 1, paragraphs 2 and 3; and Item No. 2, paragraph 3. On March 7, 2001, the Claimant and the Carrier entered into a Leniency Reinstatement Agreement, effective March 10, 2001. This Agreement bears the Claimant's signature. Upon entry of the Agreement, the Claimant resumed his employment.

On April 24, 2001, the Claimant was absent from work without documenting a claim of illness. On April 25, 2001, the Claimant was observed asleep during his work hours in the Trainman's Locker Room. He admitted that he was away from his post at the Gate Attendant's Position. By letter of April 27, 2001, the Claimant was terminated for violation of clause 5(b) of the Leniency Reinstatement Agreement. The Claimant did not sign an acknowledgment of receipt of this letter. Clause 5(b) of the Leniency Reinstatement Agreement states, "For a period of two (2) years from your date of reinstatement, you are subject to revert to the status of dismissed employee without benefit of investigation or appeal for any significant substantiated infraction involving: (b) Unauthorized absence from your position."

The TCIU filed an appeal on behalf of the Claimant to the Carrier on June 1, 2001 requesting a Rule 56 Investigation of this second dismissal. On July 25, 2001, the Carrier denied the appeal, noting that the Leniency Reinstatement Agreement contained a waiver of such Investigation. The Claimant served his Notice of Intent with the Board on September 11, 2002.

At the threshold of this case, the Carrier mounts a challenge that the claim is barred for lack of timely invocation of the Board's jurisdiction, pursuant to Rule 59(C) ("Time Limit on Claims") of the Agreement between the Carrier and the Organization, which states:

"The requirements outlined in Paragraphs A and B, pertaining to appeal by the employe and decision by the Carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Carrier to handle such disputes. All claims or grievances involved in a decision by the highest designated officer shall be barred unless within nine (9) months from the date of said officer's decision proceedings are instituted by the employe 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."

We are persuaded that the Carrier's procedural arbitrability objection is well founded. The July 25, 2001 denial by the Carrier's Manager of Labor Relations started the clock on the Claimant's nine-month period to file with the Board. That period was set to expire on April 25, 2002 excepting that an Agreement between the Carrier and the Organization extended that period by 30 days to May 25, 2002. The September 11, 2002 Notice of Intent filed by the Petitioner was served three and one-half months after the expiration of such time limit.

Although the Claimant may deserve sympathy resulting from his marital problems, Board precedents are clear that the Board strictly applies time limits for filing appeals. The Board's procedures must be respected. See Second Division

Form 1
Page 4

Award No. 37083
Docket No. MS-37473
04-3-02-3-569

Awards 5250 and 13609; Third Division Awards 22133, 24694, 25130, 32965, 33905, 33915, 35191, 35965 and 36549.

Based on the foregoing, we have no alternative but to dismiss the claim.

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 21st day of July 2004.