

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40580
Docket No. MS-40174
10-3-NRAB-00003-070444
(07-3-444)**

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

PARTIES TO DISPUTE: (Curtis Streeter, Jr.
(Northeast Illinois Regional Commuter Railroad
(Corporation (Metra)

STATEMENT OF CLAIM:

“Claim in behalf of Curtis Streeter, Jr. for payment of all wages lost account of a disciplinary suspension from March 20 thru April 18, 2007 and compensation for time that he was held out service after April 18, 2007 to attend Anger Management Therapy Classes as well as the cost of therapy.”

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 Board thoroughly reviewed the record of the case and the arguments presented by the Petitioner and the Carrier. The Petitioner is employed as a Bridge and Building Department Mechanic who filed a two part claim.

We will initially address the first part of the claim. The record indicates the Carrier issued a Notice of Investigation to the Petitioner and another employee on March 21, 2007, for being involved in a verbal altercation which escalated into threats. The formal Investigation was held on March 30 with the Petitioner in attendance. Subsequently, on April 18, 2007, the Carrier advised the Petitioner that it had been determined that he had been found guilty as charged and notified him that he was suspended from service from March 20 to April 18, 2007.

The Petitioner's suspension was appealed to Special Board of Adjustment No. 1122 by the Brotherhood of Maintenance of Way Employees. Award 53 denied the Petitioner's appeal. Pursuant to the Railway Labor Act that decision is final and binding.

Arbitral precedent regarding the Board's jurisdiction in this type of case is well established. It is not empowered to re-try the same matter and it does not have the authority to act as appellant reviewer of Awards. See Third Division Awards 22736, 28550, 31988, 33948 and Fourth Division Award 1139. Third Division Award 37312 held, in pertinent part, as follows:

“ . . . A carrier, labor organization, or an employee may not have a claim revisited by the National Railroad Adjustment Board, Public Law Board, or Special Board of Adjustment once a final Award has been rendered by one of them. . . .”

Accordingly, the first part of the claim must be dismissed because SBA No. 1122 had sole jurisdiction in that matter and the Award rendered by SBA 1122 is not subject to further challenge in this forum.

We next address the second part of the claim seeking compensation for any time the Petitioner may have lost after April 18, 2007, as well as his costs for attending therapy sessions. The record evidence substantiates that no claim was

ever presented by the Petitioner or on his behalf on the property in accordance with Rule 33 of the Agreement, which requires that all claims be presented to the proper Carrier Officer within 60 days of the occurrence on which the claim is based. There is no proof in the record that the Petitioner presented a claim on the property for time lost after April 18. During his oral presentation before the Board, the Petitioner explained that he purposely filed the second portion of the claim with the NRAB because he thought it would be a fruitless effort to file a claim on the property. That assumption on the Petitioner's part constituted a fatal procedural error.

Because the second part of the instant claim was never handled on the property, it must also be dismissed. See Third Division Award 26607.

The Board finds and holds that because the first part of the claim was previously adjudicated by SBA No. 1122 and the second part of the claim was not presented and handled on the property the entire claim must be dismissed.

Notwithstanding the foregoing, the record reveals that contrary to the Petitioner's assertion, there is nothing which proves that he was treated unfairly by being required to attend anger management classes at his own expense before being allowed to return to work. It is especially true in view of the fact that he had multiple instances of verbal altercations. The Carrier's requirement for him to attend the classes is not out of the ordinary within the industry and, in this instance, was corrective in nature.

AWARD

Claim dismissed.

Form 1
Page 4

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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 27th day of August 2010.