



Award No. 17094

Docket No. DC-17455

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerry L. Goodman, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES LOCAL 495

SEABOARD COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 495 on the property of the Seaboard Coast Line Railroad Company, for and on behalf of Cook James Gordon, that he be compensated for net wage loss since January, 1965, account of Carrier's failure to live up to an agreement and abide by the determination of a neutral physician as provided in the agreement.

EMPLOYEES' STATEMENT OF FACTS: Claimant was disqualified from service as a cook by Carrier after return to service and medical examination by Carrier's Chief Surgeon. Claimant was further examined by a Dr. Harold Rand, who was of the opinion that claimant was medically qualified to work. Carrier, nevertheless, refused to return claimant to service, and under date of August 26, 1965, the Organization filed a claim on his behalf (Employees' Exhibit "A"). The dispute was handled to conclusion on the property, carrier at this time refusing to submit the dispute to an impartial physician for determination.

Services of your Board were, as a consequence, invoked having the following claim:

"Claim of Joint Council Dining Car Employees Local 495 on the property of the Seaboard Coast Line Railroad Company, for and on behalf of cook James Gordon, that he be paid for 205 hours per month, beginning January 8, 1965, through April 30, 1965, and all extra hours lost from May 1965 until claimant is returned to service account of Carrier holding claimant out of service since January 8, 1965, in violation of the Agreement between the parties."

Under date of March 4, 1966, Carrier's Director of Personnel sent the following letter:

"Mr. Richard W. Smith,
Secretary-Treasurer,
Joint Council of Dining Car Employees,
743 East 75th Street,
Chicago, Illinois 60619

"Dear Mr. Smith:

"Referring to your conversation with Mr. Seymour in Miami last month during which you inquired as to willingness of the Carrier

stated that the organization's notice indicated copy was sent to Carrier, such copy has not been received.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was disqualified from service by Carrier's physician thereby causing a claim for restoration to service with pay for all time lost to be filed and progressed to this Division in his behalf.

While the claim was pending here, the parties entered into a settlement agreement under the terms of which the Organization agreed to withdraw the claim as consideration for the carrier agreeing to the appointment of a neutral physician whose opinion would determine whether Claimant would be restored to service.

Pursuant to the settlement agreement, the claim was withdrawn, a neutral physician was appointed who concluded that Claimant was qualified to return to service, and Claimant returned to service on April 1, 1967.

On June 12, 1967, the instant claim was filed alleging Carrier had violated the settlement agreement because it had not compensated Claimant for the time he lost from the date of his removal to the date of his restoration to service. Carrier contends to the contrary that under the terms of the settlement agreement, Organization gave up the portion of the claim for time lost from the date of removal to the date of restoration.

The Time Limit on Claims Rule bars this claim. Under that rule a claim can only operate retroactively for sixty days. Since this claim was filed on June 12, 1967, it could only seek compensation for time lost beginning April 12, 1967. As previously stated, however, Claimant returned to service on April 1, 1967. Consequently, the claim is for time lost from a date after which there has been no lost time.

The claim is, therefore, dismissed.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1969.

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