



Award No. 17135

Docket No. SG-17607

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. Criswell, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ERIE LACKAWANNA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Erie Lackawanna Railroad Company:

On behalf of Mr. George A. Bates for wages and other benefits he lost during the period beginning February 3, 1965, and ending September 19, 1965, that he was withheld from service as a Signal Helper in Gang #51 on the Allegany-Headville Subdivision. [Carrier's File: 115-137.]

EMPLOYEES' STATEMENT OF FACTS: Claimant George A. Bates was a signal Helper on Gang No. 51, Allegany-Meadville Subdivision.

Claimant had been off duty due to illness from January 8, 1965 through January 31, 1965. When he reported for duty on the advice of his Doctor, he was withheld from service beginning February 3, 1965 to and including September 19, 1965.

November 16, 1965 claim was filed in his behalf for wages and other benefits lost between February 3 and September 19, 1965. (Brotherhood's Exhibit No. 1.)

The claim was denied April 20, 1966, about 156 days after being filed. (Brotherhood's Exhibit No. 6.)

Brotherhood's General Chairman appealed to each officer of the Carrier designated to handle claims, asking payment of the claim under the time limit rules, to and including the highest officer of the Carrier designated to handle disputes, without receiving satisfactory settlement.

There is an Agreement in effect between the parties to the dispute bearing an effective date of March 1, 1953, as amended, which is by reference made a part of the record in this dispute.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: On January 9, 1965, Mr. George A. Bates, hereinafter referred to as claimant, reported he was unable to work until further notice due to severe back pains and numbness in his legs. Claimant thereafter was examined by Doctor Donald R. Watkins of Brad-

OPINION OF BOARD: Upon Claimant's return to work February 1, 1965, after an illness, he was declined his position for medical reasons and did not resume work until September 19, 1965. He asks wages and other benefits lost during this period, based on a claim filed November 16, 1965.

Claimant argues that Carrier violated Article V of the August 21, 1954, Agreement because it did not deny the claim within 60 days and therefore it should be allowed.

Carrier contends that the disqualification of Claimant in February was a single incident for which a claim was not filed until November.

The record shows that the Claimant was disqualified in February and that the claim was filed in November. This closely parallels Award 15625 (McGovern), in which an employee had not been permitted to return to work for medical reasons.

Award 15625 said:

"The Carrier defends on the basis that Article V of the Agreement of August 21, 1954, now part of the Signalmen's Agreement was violated: it provides that:

'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 evidence of record indicates that the date of the occurrence on which this claim was based, was February 25, 1963, and the date upon which it was submitted in writing to the Carrier was June 11, 1963. Obviously the sixty day period required by Article V of the Agreement of August 21, 1954 has been disregarded. We are left with no alternative other than to say that this claim is barred by Article V, and as a consequence this Board has no jurisdiction over it."

For the reasons that the claim was not timely instituted, it is 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 Claim is barred.

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 15th day of May 1969.