



Award No. 18855
Docket No. DC-19322

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL OF DINING CAR EMPLOYES (Local 495)

SEABOARD COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Joint Council of Dining Car Employees, Local 495 on the property of the Seaboard Coast Line Railroad Company for and on behalf of Mr. M. D. Shell, Waiter that Mr. M. D. Shell be returned to service and compensated for all time lost as of June 11, 1969.

The Seaboard Coast Line Railroad Company had medically disqualified Mr. M. D. Shell. On June 13, 1969 Mr. M. D. Shell was released from his doctor's care and had reached maximum improvement and was informed he could return to work.

The Seaboard Coast Line Railroad Company has violated Rule VI, Rule XII, and Rule XVI.

EMPLOYEES' STATEMENT OF FACTS: There is an Agreement in effect between the parties, copy of which is on file with your Board, and the same is incorporated into this submission as a part thereof as though fully set out. For the Board's ready reference, portions applicable to this dispute will be quoted herein.

Mr. M. D. Shell, hereinafter referred to as the Claimant, was a waiter on the Seaboard Coast Line Railroad Company, hereinafter referred to as the Carrier.

Carrier's Chief Medical Officer advised Claimant on July 24, 1968 that Claimant was medically disqualified. Following an examination on June 10, 1969 Dr. J. M. Menendez informed Claimant and the Carrier:

"Patient is now able to go back to work."

See Exhibit JC-1.

Under date of June 18, 1969 Carrier's Chief Medical Officer advised Claimant that he was medically disqualified for conditions other than listed by Claimant's own doctor. See Exhibit JC-2. On June 27, 1969 Claimant wrote a letter to the Carrier's Chief Medical Officer, wherein Claimant sought more information regarding this medical disqualification. Carrier brushed aside this request, duly made, by telling Claimant to have his lawyer request additional information. See Exhibit JC-3.

turned to service with full pay for time lost as of June 11, 1969, as being a proper and valid appeal, and the claim is declined on that basis."

The case was discussed in conference with Mr. Lindsey on April 30, 1970, and confirmed by Carrier's highest designated officer in letter dated May 5, 1970, in which he stated:

"As you were advised, Dr. Sutphin, Chief Medical Officer, advised Mr. Shell on June 18, 1969, that he was medically disqualified. No claim or grievance was submitted by Mr. Shell covering such disqualification and, therefore, as advised you in mine of April 13th, under the provisions of Rule XIV, your appeal of April 9th cannot be recognized as being valid."

In that letter Mr. Lindsey was also informed of the Court action instituted by Mr. Shell.

On September 10, 1970, General Chairman Lindsey wrote Carrier's highest designated officer, attaching report from Dr. Menendez dated September 4, 1970, which he hoped would result in Mr. Shell being returned to service; if not, requesting establishment of a 3-man Medical Board to determine Mr. Shell's fitness to perform normal duties as a dining car waiter, with Dr. Menendez's report to serve as examination of Doctor selected by Mr. Shell, and if found able to return to work to be compensated from the date he was approved by his personal physician.

Carrier's highest designated officer replied on October 7, 1970, referring Mr. Lindsey to advice extended him on April 13 and May 5, 1970, and that conditions which made his appeal invalid then had not changed; also referring to telephone conversation on June 22 when Mr. Lindsey inquired about a 3-doctor board and was informed there was no basis therefor as the entire matter was a closed issue under provisions of Rule XIV, which decision had not changed; that earlier examinations by Dr. Menendez were evaluated by our Chief Medical Officer, which did not enable him to alter his decision as to Mr. Shell's medical disqualification, and Dr. Menendez's report of September 4 reported nothing new to alter the earlier decision.

On January 15, 1971, Mr. Shell through his attorneys reinstituted in Dade County Circuit Court, his suit against the Carrier for compensatory damages for the personal injuries he had sustained in and about his body and nervous system, all of which were alleged to be permanent; further contending that he had in the past and would in the future suffer physical and mental pain and suffering, personal inconvenience and the inability to lead a normal life; that because of his injuries he had sustained a loss of earnings and would sustain a diminishment of his earning capacity in the future; also that he had in the past and would in the future be forced to pay sums of money for medical care and attention.

Copies of the above referred to correspondence and documents are attached as Carrier's Exhibit "A."

(Exhibits not reproduced.)

OPINION OF BOARD: The record shows that the claim herein was declined by the Carrier's highest designated officer on April 13, 1970, and that decision was affirmed, following conference, on May 5, 1970.

Rule XIV of the applicable agreement provides in part:

"Decision by the Carrier's highest designated officer shall be final and binding unless within twelve (12) months from the date of his decision proceedings are instituted by the employe or the duly authorized representative of the Union before the appropriate Division of the National Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided by the Railway Labor Act."

The Petitioner filed notice of intent to submit the dispute to the Third Division of the National Railroad Adjustment Board on May 14, 1971, or more than twelve (12) months after the claim was declined by the Carrier's highest designated officer.

It is well settled that time limits can be extended only by agreement, and also that conferences do not extend such time limits. See Awards 17977, 13942, 12417.

Under the provisions of Rule XIV the claim is barred and the Board has no alternative but to dismiss it.

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; and

That the claim is barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1971.