

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20330
Docket Number MS-20168

Dana E. Eischen, Referee

PARTIES TO DISPUTE: { Catherine Higgins, Stenographer E.L.
{ Erie-Lackawanna Railway Company

STATEMENT OF CLAIM: This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of our intention to file an ex parte submission on November 27, 1972, covering an unadjusted dispute between Catherine Higgins, stenographer E.L. and the Erie Lackawanna Railway Company involving our alleged illegal discharge of Catherine Higgins by the Erie Lackawanna Railway Company. This is in violation of rule #40, page 50, of the agreement between the Erie Lackawanna Railway Company and its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees and our claim for reinstatement with seniority rights unimpaired and back pay for all time lost from the date of the illegal discharge.

OPINION OF BOARD: The record in this case shows that Claimant, following an investigative hearing held in absentia but with notice, was dismissed from Carrier's service effective January 5, 1972. On August 22, 1972 Claimant requested to be returned to service which request was denied by Carrier on August 30, 1972. Some ten (10) months after her dismissal, therefore, on October 30, 1972, Claimant served Notice of Intention to file Ex Parte Submission instituting proceedings before this Board.

Carrier objects to our consideration of the merits of this matter on the ground that the claim is barred by Rule 41 of the applicable Agreement which provides inter alia for a 9-month time limit upon appeals of unadjusted claims or grievances to this Board. Claimant asserts that her letter of August 22, 1972 and Carrier's denial of her reinstatement request of August 30, 1972 is the proper point of accrual of her appeal right and that it was perfected by filing on October 30, 1972.

The pertinent Agreement provisions read as follows:

"Rule 41 - Claims for Compensation

* * * * *

(b) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance, and the representative of the Carrier

"shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed, but this shall not be considered as a precedent or waiver of the contentions of the employees as to other similar claims or grievances. It is understood, however, that the parties may, by agreement at any stage of the handling of a claim or grievance on the property, extend the 60-day period for either a decision or appeal, up to and including the highest officer of the Carrier designated for that purpose.

(c) The requirements outlined in Paragraphs (a) and (b), pertaining to appeal by the employee 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 9 months from the date of said Officer's decision proceedings are instituted by the employee 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. It is understood, however, that the parties may by agreement in any particular case extend the 9 months period herein referred to."

Upon careful consideration of the record we find that Claimant's right of appeal, if any, accrued on January 5, 1972 and was not taken within the time limits required by the Agreement. Claimant's attempt to reactivate her expired claim by the exchange of correspondence in August 1972 was nugatory and of no legal effect. Carrier at no time waived the time requirements, and no valid basis for implying waiver has been established by Claimant.

The language of Section 3 First (1) of the Railway Labor Act and the regulations of the Board (Circular No. 1, October 10, 1934) require full compliance with procedures set forth therein, governing the processing of claims on the property (including reasonable time limits) before being submitted here on appeal. The instant claim was not so processed and it must therefore be dismissed for failure to comply with the procedural prerequisites of the Act, including regulations issued and Agreements negotiated pursuant thereto.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 must be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July, 1974.