

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22449
Docket Number MS-22471

William M. Edgett, Referee

PARTIES TO DISPUTE: (Catherine O'Brien
(Grand Trunk Western Railroad Company

STATEMENT OF CLAIM: "This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of Ms. O'Brien's intention to file an ex parte submission on Thursday, June 8, 1978, covering an unadjusted dispute between Ms. O'Brien and the Grand Trunk Western Railroad Company, involving the question:

Was Ms. Catherine O'Brien wrongfully discharged from her employment for tardiness, when said tardiness was a direct result of a job-related anxiety neurosis with depressive reaction due to uncommon pressures of her employment, where the railroad knew, or reasonably should have known, of her physical and emotional condition, and the cause thereof?"

OPINION OF BOARD: Carrier has raised two defenses, at least one of which it asserts precludes the Board from considering the claim on its merits.

First Carrier points out that the claim as presented to the Board is substantially different from the claim as it was handled on the property. In her submission to the Board claimant alleges that the tardiness which led to her discharge resulted from a job related anxiety neurosis. That contention was never made on the property and the Board is precluded from considering it (Award 19330).

In addition Carrier points out that Carrier declined the employee's appeal in a letter dated August 3, 1977. Thus the time limit for institution of proceedings at the Board ran out on May 3, 1978. Claimant's letter of intent was dated May 9, 1978 and received by the Board on May 11, 1978. There can be no doubt that claimant's appeal was not timely. Nor can there be any doubt about the effect of that lack of timeliness upon the jurisdiction of the Board. In such circumstances the Board has consistently held that it lacked jurisdiction to consider the claim.

For the reasons stated the claim must be 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 must be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 13th day of July 1979.