

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23548
Docket Number MS-23767

Josef P. Sirefman, Referee

PARTIES TO DISPUTE: { Joyce Howes
(Union Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of Joyce Howes that:

1. The carrier violated the currently controlling agreement between the parties to this dispute when on August 19, 1976, the superintendent imposed the extreme penalty of dismissal on the person of JOYCE L. HOWES, General Clerk/Billing 2 P.M. - 10 P.M. on March 20, 1979.
2. The carrier violated the currently controlling agreement between the parties to this dispute by said dismissal in that the apparent reason for the dismissal was the filing of a personal injury Federal Employers Liability Act claim which was settled on March 2, 1979.
3. The carrier violated the currently controlling agreement between the parties when contrary to its own policy and practice refused to honor a treating physician's prescription that said JOYCE L. HOWES should not go to work for the period of the month of March, 1979 for medical reasons caused by an injury suffered by said JOYCE L. HOWES on March 28, 1977 during the course of her employment for the carrier.
4. Carrier should now be required to reinstate General Clerk/ 2 P.M. to 10 P.M., JOYCE L. HOWES, to service."

OPINION OF BOARD: As of March 20, 1979 Claimant Joyce L. Howes, a General Clerk/Billing, was considered by the Carrier to have forfeited seniority for failure to report to duty within ten days after expiration of a leave of absence under Rule 43(f) of the contract. On August 21, 1980 Claimant's attorney filed a Notice of Intent to file an ex parte submission with the National Railroad Adjustment Board, Third Division.

Rule 46(c) of the contract provides in pertinent part that:

"All claims or grievances involved in a decision by the highest designated officer shall be barred unless within nine (9) months from the date of said officer's decision proceedings are instituted by the employee or the duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board

"of adjustment has been agreed to by the parties hereto as provided in Section 3, Second of the Railway Labor Act."

The record establishes that the decision by the Carrier's highest designated officer was rendered on August 27, 1979. Rule 46(c) required the said Notice of Intent to have been filed by May 27, 1980. In view of the Notice having been filed almost three months later the claim is out of time. As Referee Hayes stated in Award 19164:

"The letter of written notice of intention to file ex parte submission from the Organization is dated August 26, 1970, about 14 months after the date of denial by the highest officer of the Carrier designated to handle claims and grievances. Since the Organization failed to comply with Rule 33 of the Agreement by not progressing the case to the Third Division within nine months of the final denial by the Carrier, as required by the rule, we are barred from handling the claim and it is for that reason 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 Employee involved in this dispute are respectively Carrier and Employee 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:


Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1982.