

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24318
Docket Number MS-24001

Gilbert H. Vernon, Referee

PARTIES TO DISPUTE: { Cynthia J. Soma
{ (National Railroad Passenger Corporation (AMTRAK))

STATEMENT OF CLAIM: "1. My discharge by AMTRAK for excessive absenteeism was violative of Rule #64 of the collective bargaining agreement between AMTRAK and the IEMWE., etc."

OPINION OF BOARD: The Claimant was directed to attend an investigation scheduled for November 15, 1979, in connection with her alleged absence from duty without permission on October 25, 26, 29, 30, 31 and November 1 and 2, 1979. The investigation was held as scheduled. On November 23, 1979, the Carrier directed a letter of dismissal to the Claimant which the Claimant contends she did not receive until November 26, 1979.

The Carrier has raised an objection regarding the Board's jurisdiction arguing that because the Claim was not handled in accordance with Rule 24 of the pertinent Agreement, the case is no longer subject to appeal and is barred from consideration under the provisions of Rule 74 and by Section 3(i) of the Railway Labor Act.

In reviewing the record, it is the conclusion of the Board that the Claimant failed to progress the Claim in accordance with the Agreement and that the Board is without jurisdiction to consider the dispute on its merits. Our finding is based on an analysis of the facts relative to the clear and unambiguous provisions of Rule 74. Rule 74 (Discipline) states in following part:

"(a) An employee who considers that an injustice has been done him in discipline matters and who has appealed his case in writing to the Chief Engineer within fifteen (15) days, shall be given a hearing."

The record indicates that the Claimant did not appeal the discipline to the Division Engineer's office until January 22, 1980, 61 days after the date of the disciplinary letter. The Claimant's argument suggests that her appeal was timely under Rule 75; however, Rule 75 clearly applies to grievances "Other Than Discipline."

Inasmuch as the Claim was not handled in the usual manner as specified by the Contract, it is barred.

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.

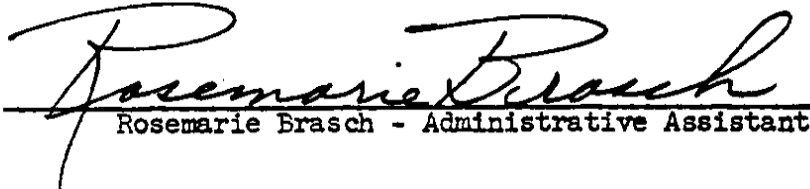
A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of April 1983.

