

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24475
Docket Number MS-24412

George S. Roukis, Referee

PARTIES TO DISPUTE: { Benjamin A. Costello
{ Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "This is to serve notice, as required by rules of the National Railroad Adjustment Board, of my intention to file ex parte submission on February 4, 1982 covering an unadjusted dispute between me and the Chicago & Northwestern Transportation Company involving the question:

Sick time pay before being dismissed from the service of the Chicago & Northwestern Ry. Co. on March 4, 1974, discipline notice No. 4743. Dates claimed December 13, 14, 15, 1973.

My seniority entitled me to an additional 10 days during the year 1974, the claim was disallowed by the Division Manager at Green Bay Wisconsin at the time. Carrier violated the agreement in force at that time."

OPINION OF BOARD: On January 4, 1982 Petitioner filed a claim with the Division asserting that his rights under the controlling BRAC Agreement were violated when Carrier denied him sick time pay for December 13, 14 and 15, 1973 and additionally ten (10) days sick time for 1974. He contends that he was unaware an individual employe could file an ex parte claim with the National Railroad Adjustment Board and contests the denial determination rendered by Carrier's highest designated officer on June 24, 1974. He argues that he was led to believe that he was covered by a leave of absence, as per the alleged message of a Carrier official on December 11, 1973 and thus, he was permissibly absent on the claimed days.

Carrier contends that he was advised on December 11, 1973 by the Assistant Division Manager - Administration that he would not be permitted to lay off, commencing December 12, 1973, unless he had a doctor's slip or an **approved leave of absence beginning December 12, 1973. It argues that he attached a partially completed leave of absence form, but did not provide a doctor's certificate, and laid off from work on December 13, 14 and 15, 1973 without providing the required documentation. It avers that he filed a claim for these days, which was consistently denied by carrier officials as it was progressed through the appeals channels and its highest designated officer, the Director of Labor Relations, rejected the claim on June 24, 1974. It asserts that the claim should now be dismissed since it was not appealed within nine (9) months from the decision of the highest designated officer in accordance with Agreement Rule 35(a)3. This provision is referenced as follows:**

"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."

In our review of this case, we agree with Carrier's position on the procedural arguments. As a judicial body concerned with determining whether the terms and conditions of a collective bargaining Agreement have been properly complied with, consistent with legally accepted contract interpretation principles and the decisional law of the National Railroad Adjustment Board, we cannot disregard the explicit appeals procedure set forth in the **labor agreement**. In the instant dispute, Rule 35(a)3 is a specifically crafted time limitation rule which pointedly requires that all claims involving a decision by the employer's highest designated officer shall be barred unless within nine (9) months from the denial decision, the claim is filed with the National Railroad Adjustment Board or a system, group or regional board of adjustment established by the parties. Carrier has pointed out herein that Claimant failed to comply with these time limits as required by the Agreement and we cannot rewrite an extension of the appeals process by judicial interpretation. In Third Division Award No. 23520 involving a similar procedural issue, we held in part that:

"We note specifically that the Employee did not present the dispute to this Board within the 9 month period mandated in the pertinent Agreement. Accordingly, regardless of the other contentions advocated by the parties, we find that we are without authority to consider the matter, and we will dismiss the claim."

In Third Division Award No. 23466, we also held in part that:

"This Board is very sensitive to the sometimes difficult road an individual must travel in seeking redress of a grievance. Nevertheless, we cannot ignore the time limits within which grievances must be pursued, or the procedures designed to resolve disputes on the property. To do so, would defeat the purposes of the Railway Labor Act and would effectively rewrite the Agreements between the parties. This, of course, we cannot do."

In the latter case, we recognized the concerns of an individual employe respecting the redress of an asserted grievance, but we are not empowered to rewrite collective bargaining agreements because of a perceived sense of justice. We would be overstepping the bounds of judicial propriety and in the process **would** be vitiating the purposes of the Railway Labor Act. The claim before us was denied some nine (9) years ago and we must dismiss it for the reasons aforesaid.

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 Employes involved in this dispute are respectively Carrier and Employes 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
Rosemarie Brasch - Administrative Assistant

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