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SVP
NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25194
Docket Number MS-25435

Paul C. Carter, Referee

(Emory K. Hall
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Liability of employers (Conrail) for back wages and reinstatement of seniority and educational benefits due to the wrongful medical disqualification of me by the company due to a nonwork-related injury in January of 1977, which wrongful disqualification continued until January 18, 1983, despite the repeated and almost continuous efforts to obtain reinstatement and compensation by my union, The Brotherhood of Railway Signalmen, my attorneys, and myself from April, 1977, to date."

OPINION OF BOARD: The record shows that Claimant, the Petitioner, an Assistant Signalman, sustained an off-duty head injury on January 23, 1977. The Carrier states that Claimant marked off duty on account of headaches and dizziness. On March 25, 1977, Claimant's personal physician issued a report recommending that Claimant return to work on a restricted basis, working a ground level position only. On April 14, 1977, Claimant appeared in the Carrier's Medical Office in Chicago with a copy of the March 25, 1977 report; however, the Carrier's Medical officer did not approve Claimant for return to service as his EEG was abnormal, he was taking Dilantin, he could not work his regular position, and no positions were available to meet the restriction of ground level work only.

Finally, Claimant was examined by a Neurologist on December 11, 1981, was requested to submit to another EEG, which was taken on January 5, 1982. On January 6, 1982, the Neurologist issued an opinion that Claimant could return to work on his regular assignment. On January 11, 1982, Claimant was instructed by Carrier's Medical Officer to report for work as an Assistant Signalman the following day. Claimant reported for duty on January 18, 1982.

On February 11, 1982, Claimant and his Attorney wrote to the Local Chairman of the Organization, submitting a claim for back wages on behalf of Claimant in the amount of \$100,000.00. contending such amount represented pay for time lost by Claimant while out of Carrier's service, and also requested other benefits for Claimant as outlined in Petitioner's Statement of Claim. The claim was filed by the Local Chairman of the Organization with the Carrier on February 23, 1982. The claim was denied on March 12, 1982; appealed to Carrier's Manager-Labor Relations on March 27, 1982, and denied April 22, 1982. The claim was appealed to Carrier's Senior Director-Labor Relations on December 9, 1982, and denied on December 20, 1982.

The Carrier has contended from the beginning that the claim is procedurally defective under Rule 4-K-1 of the applicable collective bargaining Agreement, which provides:

"4-K-1. (a) All grievances or claims other than those involving discipline must be presented, in writing, by the employee or on his behalf by a union representative, to the Supervisor-C&S (or other designated supervisor), within sixty (60) calendar days from the date of the occurrence on which the grievance or claim is based. Should any such grievance or claim be denied, the Supervisor shall, within sixty (60) calendar days from the date same is filed, notify whoever filed this grievance or claim (employee or his representative) in writing of such denial. If not so notified, the claim shall be allowed as presented.

(b) A grievance or claim denied in accordance with paragraph (a) shall be considered closed unless it is appealed, in writing, to the Manager-Labor Relations by the employee or his union representative within sixty (60) calendar days after the date it was denied. If requested by the union representative, a grievance or claim will be discussed on a mutually agreed upon date. When a grievance or claim is not allowed, the Manager-Labor Relations will so notify, in writing, whoever appealed the grievance or claim (employee or his representative) within sixty (60) calendar days after the date of appeal or the date the grievance or claim was discussed (whichever is applicable) of the reason therefor. When not so notified, the claim will be allowed as presented.

(c) A grievance or claim denied in accordance with paragraph (b) shall be considered closed unless it is listed with the Senior Director-Labor Relations by the employee or his union representative within sixty (60) calendar days after the date it was denied. A grievance or claim will be discussed on a mutually agreed upon date. When a grievance or claim is not allowed, the Senior Director-Labor Relations will so notify, in writing, whoever listed the grievance or claim (employee or his representative) within sixty (60) calendar days after the date the grievance or claim was discussed of the reason therefor. When not so notified, the claim will be allowed as presented."

Even if the Board considers the letter of February 11, 1982, signed by the Claimant and his Attorney, and addressed to the Local Chairman of the Organization, and which was presented by the Local Chairman on February 23, 1982, as a grievance or claim, as contemplated by Rule 4(k)1.(a), it was not presented within sixty (60) calendar days from "the date of the occurrence on which the grievance or claim is based." Claimant was withheld from the service by the Carrier beginning April 14, 1977. That was the date of the occurrence on which the grievance or claim was based. A claim not submitted in writing by the employee or on his behalf by a union representative within sixty (60) days from the date of the occurrence on which the grievance or claim is based, is barred under the rule. See Award Nos. 6854 and 8891 of the Second Division and Award No. 20631 of this Division. There was no "continuing violation" of the Agreement.

Time limit restrictions may only be extended by agreement of the parties. The Carrier has not waived the time limit restrictions, and the Board may only properly apply them as written.

We find and hold that the claim is barred under the applicable time limit rules, and it will accordingly 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

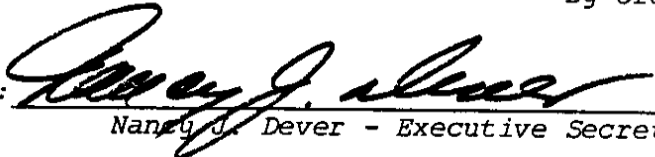
That the claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1985.