

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26331
Docket Number MS-26974

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Herbert Webster
(
(Long Island Railroad Company

STATEMENT OF CLAIM:

"Petitioner was dismissed from his position as signalman for the Long Island Rail Road on April 10, 1985, for allegedly falsifying his employment application and medical history questionnaire dated June 11, 1981. The charges as specifically set forth by the Long Island Rail Road are:

'Falsification of your employment application dated June 11, 1981 (sic) in that:

1) You answered "No" to the question "Have you ever had an on-the-job accident?" when, in fact, you had two prior on-the-job accidents while in the employ of the National Railroad (sic) Passenger Corporation, d/b/a Amtrak.

2) You answered "No" to the question "Have you or anyone on your behalf filed claim against or sued a person or firm for personal injury to yourself" when, in fact, you had on October 29, 1980 instituted a civil action against the National Railroad Passenger Corporation, d/b/a Amtrak as a result of a personal injury sustained on December 19, 1979.'

'Falsification of your medical history questionnaire dated June 11, 1981 in that you answered no to the following questions:

1) Have you ever had a serious illness, injury, or operation? (If so, described and give names and addresses of physicians who cared for you.)

2) Have you been hospitalized in the past 5 years? (If so, give reasons and addresses of hospitals.)

3) Have you ever filed claim for veterans' disability or workmen's compensation due to injury or disease? (If so, describe circumstances.)

- 4) Have you ever had to take time off from work or have your work limited because of your health? (If so, describe.)
- 5) Have you ever had head injuries?
- 6) Have you ever had spine or back injury, operation, pain, or disability?'

Petitioner seeks reinstatement and back pay from April 10, 1985."

OPINION OF BOARD: The record shows that following a formal trial or investigation conducted by the Carrier, Claimant was dismissed from service as a Signalman on April 10, 1985, for allegedly falsifying his application for employment and medical history questionnaire dated June 11, 1981.

The General Chairman of the Organization representing the craft in which Claimant was employed by the Carrier prior to his dismissal, progressed a Claim in behalf of Claimant to Carrier's highest designated officer of appeals on the property, contending that Claimant should be returned to duty and paid for all time lost. The Claim progressed by the Organization representative was denied by Carrier's highest designated officer of appeals on September 10, 1985. Section (D) of Rule 47 of the applicable Collective Bargaining Agreement provides in part:

"Any appeal from the decision of the Carrier's highest designated officer must be initiated to a proper tribunal as established under the provisions of the Railway Labor Act within ninety (90) calendar days of the date of such decision."

On December 4, 1985, a representative of the Law Office of Kimmelman, Sexter & Sobel of New York City, N.Y., wrote the Executive Secretary of this Division of the National Railroad Adjustment Board:

"Re: Herbert Webster, Case No. 6746-LI

Dear Ms. Dever:

We are the attorneys for Mr. Herbert Webster. Mr. Webster has been dismissed from his employment with the Long Island Railroad for allegedly falsifying his employment application.

Mr. Webster wishes to appeal the Railroad's action before the National Railroad Adjustment Board. Please send us the requisite information so that we can begin the process of his appeal immediately.

Thank you for your attention to this matter."

The Executive Secretary responded, outlining the procedure to be followed in the filing of submissions. On January 2, 1986, the representative of the Law Office addressed another letter to the Executive Secretary of the Division. The letter of January 2, 1986, was captioned: "Re: Herbert Webster, Amended Notice of Intent," and read in part:

"We are the attorneys for Mr. Herbert Webster, and we submit this amended notice of intent on his behalf.

This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of Mr. Herbert Webster's intention to file an ex parte submission covering an unadjusted dispute between him and the Long Island Rail Road involving the following claim..."

The letter of January 2, 1986, also specified the remedy sought:

"Petitioner seeks reinstatement and back pay from April 10, 1985."

The Carrier contends vigorously that no appeal from the decision of the Carrier's highest designated appeals officer was initiated within ninety calendar days of such decision as required by that part of Section (D) of Rule 47 heretofore quoted. The Carrier insists that the letter of December 4, 1985, did not constitute a "notice of intent" and that such required notice was not filed until the "Amended Notice of Intent" dated January 2, 1986. The Carrier insists that the Claim is barred and must be dismissed.

The Board has given this initial issue considerable study. Circular No. 1 of the National Railroad Adjustment Board, issued October 10, 1934, under the sub-heading "EX PARTE SUBMISSION" provides:

"In event of an ex parte submission the same general form of submission is required. The petitioner will serve written notice upon the appropriate Division of the Adjustment Board of intention to file an ex parte submission on a certain date (thirty days hence) and at the same time provide the other party with copy of such notice. For the purpose of identification such notice will state the question involved and give a brief description of the dispute. The Secretary of the appropriate Division of the Adjustment Board will immediately thereupon advise the other party of the receipt of such notice and request that the submission of such other party be filed with such Division within the same period of time."

The Board is forced to the conclusion that the letter of December 4, 1985, was not a notice of intent, nor was it accepted as such by the Board. We consider the letter of December 4, 1985, as a letter of inquiry. The writer did not ask that it be accepted as a notice of intent, nor was a copy furnished to the other party. There is no provision for an "Amended Notice of Intent," as the letter of January 2, 1986, was captioned; however, that letter did not initiate an appeal from the decision of the Carrier's highest designated officer within ninety calendar days from such decision as required by Section (D) of Rule 47.

The Board must apply time limit rules strictly in accordance with the terms of such rules. Since notice of intent to file a submission to this Board was not filed until after the expiration of the time limit contained in Section (D) of Rule 47, the Board must dismiss the Claim for non-compliance with the Agreement. See Fourth Division Award No. 3045, Third Division Award No. 23466, and Second Division Award No. 6101.

If the dispute were properly before the Board, the Claim would be denied as there was substantial evidence in the investigation, or trial, conducted on April 25, 1985, including Claimant's statement, in support of the charge that Claimant did falsify his application for employment dated June 11, 1981, and that he falsified his medical history questionnaire on the same date. We find that none of Claimant's substantive procedural rights was violated in the timeliness of the trial, or investigation, or the manner in which it was conducted. Many Awards have been issued by this Board upholding the dismissal of employes who falsify their applications for employment. See Third Division Awards Nos. 11328, 18103, 22695, 23827, 24222 and 24223.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

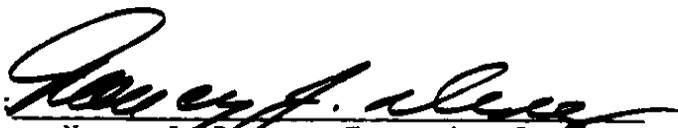
That the Claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 8th day of June 1987.