

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26367
Docket Number MS-27008

John E. Cloney, Referee

PARTIES TO DISPUTE: (Daniel A. Frank
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(National Railroad Passenger Corporation

STATEMENT OF CLAIM:

"Why I was fired from my job at Amtrak?"

OPINION OF BOARD: Claimant was sent a Notice of Investigatory Trial or Hearing due to excessive absenteeism on February 20, 1985. After a postponement requested by Claimant the Trial was held on March 12, 1985. On March 27, 1985, a Notice of Discipline of "Dismissal in all capacities", dated March 26, 1985, and effective immediately was sent to Claimant. In fact, two such documents were sent; one to Claimant's home address and the other to Willingway Hospital, Statesboro, Georgia, where Carrier had reason to believe Claimant had been admitted. The certified letter to Claimant's home address was apparently returned to sender. The return receipt from the hospital shows delivery on March 29, 1985.

By letter dated May 8, 1985, and received by the Amtrak Engineering Department on May 14, 1985, Claimant requested an appeal. The letter, on Willingway Hospital stationery stated:

"I am enclosing my request for appeal.
I have been unable to file this previously as I have been a patient at Willingway Hospital in Statesboro, GA."

The reference to an enclosed request for appeal is to a self-addressed form which had been supplied by Carrier with the Notice of Discipline. That form has a blank space in which Claimant was to note the date the discipline was "signed for." Claimant showed that date to be March 29, 1985.

Included in the record is another document dated May 8, 1985, also on Willingway Hospital letterhead. Its text is:

"Certificate

This is to certify that (Claimant) was admitted to Willingway Hospital on March 20, 1985 and has a tentative discharge date of May 14, 1985. He has participated in all phases of the Willingway Program and remained the recommended time thus far. He

seems to have gained good insight into the nature of his illness.

/S/ W. E. Gray, M. D."

Rule 74 - Discipline, in the parties Agreement states in 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 appropriate Assistant Chief Engineer (Track C & S/ET, Structures) within fifteen (15) days, shall be given a hearing."

By letter of June 17, 1985, to Claimant Carrier responded that appeal was not taken within 15 days, and "For this reason alone, the appeal must be and is denied." This has remained Carrier's position throughout.

Numerous National Railroad Adjustment Board decisions have established that Section 3, First (1) of the Railway Labor Act precludes this Board from considering Claims which have not been progressed and "handled in the usual manner" under the Agreement. Clearly this Claim was not in that no appeal was taken within 15 days. (See Third Division Award 24475.)

Without reference to the question of what might be the effect of inability to appeal in a timely fashion because of physical incapacity, this Board notes there is no proof of such inability here. Claimant did state, without details or proof, that he had been "unable" to file earlier. The statement of Dr. Gray makes no such assertion and seems in fact to suggest the opposite.

The Claim is procedurally defective and must be dismissed without reference to its merit.

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

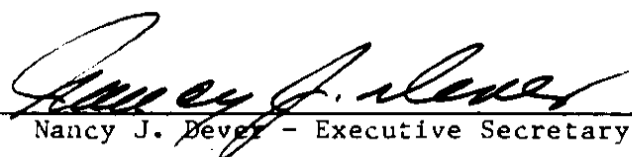
That the Claim is barred.

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 25th day of June 1987.