

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32965
Docket No. MS-33678
98-3-97-3-150**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

(DeAudrey Pryor

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

"I was put out of service January 19, 1995 and later terminated due to an alleged argument that allegedly took place off duty and away from the work place involving two brothers (supervisor) Ralph Torres and Tomaso Torres, both of which are my co-workers. Ralph Torres had vowed to me several months prior to this staged incident 'I'll have your black a-- fired you just wait and see.'. I filed a grievance regarding this incident and no response was given (which is in direct violation of the Brotherhood of Maintenance of way (sic) Union Agreement contract). Now the brothers are maintaining that I threaten and used vulgar language toward them while trying to provoke a fight with one or both of them. In all honesty this incident never occurred nor did I see these two brothers after work on the day in question. I might also add that the explanations and accounts of these two brothers were conflicting, and each says the incident occurred at a different location but at the same time. Being that it is impossible for me to have been in the two places at one time provoking an argument and insighting (sic) a fight, it is very obvious that this case was poorly investigated, and ruled unfairly by AMTRAK authoritative figures. I feel that his issue has everything to do with the influence that Ralph Torres has as a supervisor, his personal dislike for a coworker and the luxury of having strong family ties on the job. I feel this entire scenario is questionable and warrants the attention of an unbiased organization to decide upon.

The remedy sought in this instance is to have my position at AMTRAK restored with seniority and all other rights and benefits properly due me."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The jurisdiction of the Board has been raised by the Carrier as a threshold matter. Carrier contends the matter was not advanced to the Board in accordance with Rule 15 of the effective Agreement. That Rule provides that the appeal from the decision of the Director of Labor Relations must have been made within 185 days of the date of the decision. Although dated October 10, 1996, the appeal was not filed with the Board until February 11, 1997. Because the decision of the Director of Labor Relations was dated June 12, 1996, Claimant's filing was 59 days late. As such, the appeal was not progressed in the usual manner required by Rule 15. Accordingly, it is barred from consideration by Section 153, First (i) of the Railway Labor Act.

A review of the record in this case reveals no persuasive evidence that Claimant made the requisite filing with the Board prior to February 11, 1997. Indeed, the record shows that Carrier's copy of the filing was not postmarked until January 4 and it was not received until January 7, 1997, although it was also dated October 10, 1996. Even a filing with the Board in January 1997 would have been untimely.

Procedural objections of the type here are well settled matters. Because it was not filed in accordance with the effective Agreement, the Railway Labor Act denies the Board jurisdiction to review the matter. Accordingly, the proper disposition of such matters is dismissal. See, for example, Third Division Award 25130.

Form 1
Page 3

Award No. 32965
Docket No. MS-33678
98-3-97-3-150

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of November 1998.