

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41693
Docket No. MS-41817
13-3-NRAB-00003-120115**

The Third Division consisted of the regular members and in addition Referee Martin W. Fingerhut when award was rendered.

**(Monica M. Roberts
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.**

STATEMENT OF CLAIM:

- “1. The Carrier acted arbitrarily and in a vengeful manner, when on August 12, 2010 in serving me, Clerk Monica M. Roberts, ID#XXXXXX, with notification to attend a formal investigation in Conference Room #3327, third floor at the CSX Customer Service Center, 6737 Southpoint Drive South in Jacksonville, Florida at 10:00 am on Thursday, August 19, 2010. The purpose of this investigation was to determine my responsibility, if any, for excessive absenteeism and failure to protect my assignment.**
- 2. I, Monica M. Roberts, never received notification of this formal investigation and was not aware of any investigation taken (sic) place. I hereby request the opportunity to defend myself against any and all allegations.**
- 3. As a result of the above stated violation, the Carrier shall: Clear Claimant's personal record of discipline, compensate me, Monica M. Roberts for all time lost and restore full seniority rights and coverage, plus any benefits I lost.”**

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.

On September 2, 2010, the Carrier notified the Petitioner that she had been found guilty of violating Carrier Rules dealing with excessive absenteeism and failure to protect her assignment. The Petitioner was assessed a five-day suspension. In the Petitioner's Notice of Intent addressed to the Board, the Petitioner asserted that she had not received notice of the Investigation held on August 26, 2010, had not been aware of the Investigation, and thus had not been given "the opportunity to defend myself against any and all allegations."

In the handling of the dispute before the Board, the Carrier raises a procedural issue which, if found to have merit, would require the Board to dismiss the claim without reaching the merits. Specifically, the Carrier argues that the Petitioner's Notice of Intent addressed to the Board was untimely under Rule 37 (c) of the applicable Agreement. Rule 37 (c) provides, in pertinent part, that all disputes not resolved on the property, will "be barred" unless a claim is filed with the Board "within nine months" from the date the dispute was denied by the highest designated officer of the Carrier. In this dispute, the denial by the highest designated officer is dated February 24, 2011. The Notice of Intent addressed to the Board is dated December 1, 2011, more than nine months after the date of denial. The Carrier points out that the Notice of Intent was not filed in a timely manner as prescribed by Rule 37(c) and, thus, the claim is barred. There is a long line of precedent supporting the Carrier's position. See, for example, Second Division Award 10384, as well as Third Division Awards 27502 and 35966. Under the circumstances, the Board is required to dismiss the claim.

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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 16th day of September 2013.