

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44803
Docket No. MS-46816
23-3-NRAB-00003-210775**

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

**(David Shenberger
PARTIES TO DISPUTE: (
(Port Authority Trans-Hudson Corporation**

STATEMENT OF CLAIM:

“After denying a grievance, denying an appeal and refusing to participate in arbitration, the Port Authority Trans Hudson Corporation has failed to provide me with the life insurance benefit that all employees with more than five years of service are provided, as stipulated in Article IX-C of the Agreement between the Port Authority Trans Hudson Corporation and the S.M.A.R.T. Union, Local 1413 (Tower Group).

I therefore request that I be made whole regarding the life insurance benefit provided to all employees with more than five years of service who are covered under the Agreement between the Port Authority Trans Hudson Corporation and the S.M.A.R.T. Union Local 1413 (Tower Group) and that I be given the same life insurance benefit, in the amount of 2,080 hours times the basic hourly rate rounded off to the next \$1,000 times three, that all employees who are covered under this agreement are provided with.”

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 Claimant first entered service with the Carrier as a Tower Operator on August 30, 1993. On July 1, 2009 the Claimant retired with a disability annuity, and began to receive pension benefits, healthcare and life insurance benefits that are afforded to retired employees.

Upon being sufficiently recovered from his medical condition, the Claimant sought re-employment by the Carrier in 2016. Although he had no right to be re-employed, the Carrier hired him for a vacant Tower Operator position on March 10, 2017. The Claimant was notified by the Prudential Insurance Company on June 19, 2017 that he would be entitled to life insurance benefits based upon his 2017 hire date. The Claimant subsequently retired a second time on August 1, 2019.

The instant claim was filed on the Claimant's behalf on November 4, 2020, seeking the life insurance benefits that are afforded to an employee with five years of service, arguing that all of his service with the Carrier should be counted toward his benefit eligibility. The Carrier denied the claim on November 20, 2020, asserting, *inter alia*, that the claim was untimely. In this regard, the Carrier cites Article XI of the Agreement, providing, in pertinent part, as follows:

- A. Each claim and grievance under this Agreement must be made in writing by the employee asserting the same and filed with the Superintendent of Transportation within thirty (30) days from the date of the occurrence on which the claim or grievance is based, and any claim or grievance not made and filed as herein provided shall be barred and will be deemed to have been abandoned.

The Carrier submits that "the occurrence on which the claim or grievance is based" was Prudential's June 19, 2017 notification to the Claimant that his life insurance benefit was based upon only his new employment.

When the Claimant had returned to the Carrier's employ in 2017, he had asserted the Carrier refused to grant him the amount of sick and vacation leave to which he would have been entitled based upon his aggregated length of service. The United Transportation Union filed a claim for the leave benefits, which was ultimately decided in the Claimant's favor by Public Law Board No. 7551 in Award No. 8 on November 7, 2018. An action was filed by SMART-TD, as the United Transportation Union is now known, in the United States District Court for the Northern District of Ohio, seeking

enforcement of the Award. The Court found in favor of the Union, and that decision was affirmed by the Sixth Circuit Court of Appeals. The history of that litigation is set forth because the claim, the Award, and the court decisions all referred only to sick leave and vacation leave benefits. At no point in those proceedings was there any mention of life insurance benefits, nor did the claim seek “all benefits to which Claimant might be entitled.” Thus, the doctrine of *expressio unius est exclusion alterius* applies. The claim presented on November 4, 2020 was the first to address the life insurance benefits.

Based upon the record before us, the Board finds that the claim herein was not presented to the Carrier within thirty days of the occurrence giving rise to it, namely the letter from Prudential Insurance. The Carrier raised the issue of timeliness in its first denial of the claim, and preserved its position during the subsequent handling of the dispute on the property. The Claimant’s submission, though, offered no argument to counter the Carrier’s position on this issue. We have no choice but to strictly enforce the provisions of Article XI, Section A, and consider the claim to be barred. Without consideration of the merits, therefore, the claim must be dismissed.

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 28th day of October 2022.