

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Form 1

Award No. 24199
Docket No. R43793
93-1-91-1-N-2215

The First Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

(John D. Peters
PARTIES TO DISPUTE: (
(New Jersey Transit Rail Operations

STATEMENT OF CLAIM:

"Claim in question is should Engineer John D. Peters be restored to service with all seniority rights, pay for time lost, including all medical and other benefits and railroad retirement credits from October 27, 1987 until date of restoration?

Question on which award is desired is did New Jersey Transit Rail Operations act in accordance with the applicable provisions of the Brotherhood of Locomotive engineers contract in effect on October 27, 1987 in terminating me as an engineer within the proper time limits and procedures required. I was first notified in writing by the carrier on April 6, 1991 of such termination."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 August 17, 1987, Claimant completed an application for employment with Carrier and was hired as a locomotive engineer on September 1, 1987. He continued his employment relationship with Carrier until October 27, 1987, when he was terminated following the Carrier's determination there were discrepancies involving the reasons he left his previous employers. By letter dated October

29, 1987, Claimant contacted the Carrier seeking reconsideration of his termination. This was denied according to Carrier correspondence dated November 5, 1987.

Approximately three and one-half years later, Claimant advised the Carrier by letter dated March 22, 1991, of his intent to progress his termination to the Board.

After careful consideration of the record in its entirety, we concur with Carrier's position that the Claim must be dismissed. Claims or grievances must be handled in the usual manner up to and including the chief operating officer of the Carrier designated to handle such disputes pursuant to Section 3, First (i) of the Railway Labor Act as amended and Circular No. 1 of the Board. Since no claim or grievance was progressed to and handled by the final appeal officer nor discussed in conference prior to the submission by Claimant of this dispute to the Board, it is clear that the instant dispute has not been handled in the "usual manner" as required. See First Division Awards 24084, 24039 and Third Division Awards 28896, 28595.

However, even if Claimant's submission could, in all other respects, satisfy our jurisdictional requirements, we would be compelled to dismiss the claim for failure to comply with the time limit provisions of Rule 47 of the controlling agreement. Carrier denied Claimant's reinstatement request on November 5, 1987, but a claim was not submitted to this Board until April 8, 1991, far beyond the 15-day time limit.


Given the state of the record, we have no alternative but to dismiss this claim.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of February 1993.