

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISIONAward No. 24401
Docket No. 43813
94-1-91-1-B-1887

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

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
(
(Boston and Maine Corporation

STATEMENT OF CLAIM:

"Claim of Engineer George W. Pearson for: immediate return to service with seniority right unimpaired and removal of the discipline from his service restoration of full Mendocino Coast Labor Protection benefits and rights to comparable payment for all time lost, including time held out of service pending investigation; and proper credit toward Railroad Retirement, health and welfare, and other applicable benefits, including reimbursement for any monetary loss sustained as a result of lapse of coverage during the pendency of the claim."

FINDINGS:

The First Division of the Adjustment Board, upon 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 waived right of appearance at hearing thereon.

Claimant was dismissed from service after a hearing on the charge that he violated General Rule T and Rule GR-N by falsifying his time sheet on July 17, 1986.

The date of his dismissal was August 12, 1986. On September 5, 1986, the discipline was appealed to the Senior Director, Labor Relations, the highest officer designated to handle claims. This appeal was followed on February 4, 1987, by another letter from the Organization to the Carrier requesting that the Carrier exercise leniency in light of Claimant's record, the nature of the offense, and the amount of time he had already been held out of service.

On April 15 1987, a conference was held concerning the subject claim. Two weeks later, on May 1, 1987, the Senior Director of Labor Relations wrote the General Chairman, referring to that conference, and confirming his statement there made that favorable consideration could not be given to reinstating the Claimant. The General Chairman replied by letter dated May 15, 1987, requesting once again that Carrier extend leniency in the Claimant's case.

In October, 1988, the General Chairman informed the Carrier by letter that the Organization intended to submit the instant matter to the Board for adjudication at a later date. The letter requested that Carrier advise the General Chairman of its "final position" on this case. On October 25, 1988, Carrier responded that there would be no change in its position. The claim was subsequently progressed to the Board on July 9, 1991, when notice was served of the Organization's intent to file an Ex Parte Submission in the case.

The parties' Agreement, at Article XIII, Section 9 (e) states:

"(e)...All claims or grievances involved in a decision of the highest officer shall be barred unless within six months from the date of said officer's decision proceedings are instituted by the employee or his duly authorized representative before a tribunal having jurisdiction pursuant to law or agreement of the claim or grievance involved."

Proceedings in this matter were not instituted until July 9, 1991, more than four years after the decision of Carrier's highest designated appeals officer to deny the Organization's appeal, and nearly three years after Carrier's written notice of refusal to give favorable consideration to the Organization's subsequent requests for leniency reinstatement.

Under the terms of Article XIII, Section 9 (e), the Organization failed to timely institute proceedings before a tribunal and therefore the claim is barred by the time limitations in the Agreement.

AWARD

Claim dismissed.

Form 1
Page 3

Award No. 24401
Docket No. 43813
94-1-91-1-B-1887

O R D E R

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 First Division

Dated at Chicago, Illinois, this 7th day of November 1994.