

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

PARTIES TO DISPUTE: (Roy McCann
(Southern Pacific Transportation Company (Western Lines))

STATEMENT OF CLAIM:

"(File No. 011-221 (McC)), the Union rejecting my claim."

FINDINGS:

The Third 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 employes 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.

On March 15, 1987, the Claimant served written notice to the Board of his intention to file an Ex Parte Submission apparently challenging the Carrier's refusal to reinstate him to duty because of medical restrictions.

The record reveals the Organization requested the selection of a special panel of doctors to determine whether or not the Claimant's physical fitness and ability allowed him to return to work under Rule 73(b). On March 11, 1986, the Carrier denied this request. This denial was appealed on April 8, 1986. By letter dated June 6, 1986, the Carrier's highest appeals officer denied the Claim.

Rule 60(c) states in relevant part:

"All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employe or his duly authorized representative before the appropriate division

of the National Railroad Adjustment Board of a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the 9 months' period herein referred to."

Clearly, the March 15, 1987, Notice of Intent to file an Ex Parte Submission is not within the nine (9) month period mandated by the above Rule. Furthermore, there is no evidence the parties mutually extended the time limits within which to institute a claim before the Board. Thus, this Board is without jurisdiction to address the merits of this Claim. Even if this were not the case, the Board's reading of this record fully supports the Carrier's position.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1989.