

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISIONAward No. 4931
Docket No. 4920
94-4-92-4-50

The Fourth Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

(American Railway and Airway Supervisors
(Association, Division of TCU

PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation
((AMTRAK)

STATEMENT OF CLAIM:

- "1. Carrier has violated the Agreement, when on March 15, 1991, Mr. Blakey was placed on medical leave without pay in violation of the Short Term Disability Income Leave Policy.
2. Carrier be required to compensate, Mr. Blakey in accordance with the Short Term Disability Income Leave Policy, making him whole for all funds withheld."

FINDINGS:

The Fourth 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 waived right of appearance at hearing thereon.

This dispute involves the interpretation of Amtrak's "Short Term Disability Policy." The Carrier argues that this Board lacks jurisdiction to hear this dispute. It argues that the "Short Term Disability Policy" is not part of a Collective Bargaining Agreement between the Parties.

The Organization claims Rule 14 - Sick Leave, provides for Management's Sick Leave Plan to be applied to Supervisors covered by the Collective Bargaining Agreement. Neither Party furnished this Board with a copy of Rule 14, nor the Carrier's "Short Term Disability Plan." The Carrier did furnish page 2 of the Policy which reads:

"Purpose

The purpose of this policy is to explain the short-term disability (STD) payment schedule and the procedure for claiming benefits.

Scope

Benefits cover all regular, full-time employees not covered by a collective bargaining agreement based on company hire date. In addition, Mechanical Department foreman and On Board Services chiefs and supervisors covered by Rule Agreement with ARASA are also covered based on their ARASA seniority date.

Responsibility

The Assistant Vice President-Personnel is responsible for the administration, interpretation and approval of any variances to this policy."

Apparently the Organization has agreed that this Sick Leave is the management's "Short Term Disability Policy," and that they have not negotiated any Agreement with the Carrier as to the details and procedures covering their "Sick Leave."

However, before we can resolve the positions of the parties the Carrier Member at the Referee Hearing claimed this Board lacks jurisdiction to hear this case because a conference was not held between the General Chairman and the Director of Labor Relations. Many tribunals have held that jurisdictional issues can be raised at any time. See Third Division Awards 8886, 9189, 10956, 19527, 20165, and 20832.

The record is clear. A conference at the highest level was not held.

In Third Division Award 14873 the Board held:

"This Board is a creature of Statute; its powers are defined and limited by Statute. It is powerless to enlarge upon any Statutory grant. Section 2, Second of the National Railway Labor Act - in clear, concise language - calls for a conference of the parties on the property prior to submission of a claim to this Board. Section 2, Sixth, of this Act does not in any way alter the mandatory provision of Section 2, Second; it merely gives to either party the right of requesting a conference and imposes a time limit within which to confer after a request has been made.

No matter how futile a conference may be, a conference must be held on the property prior to submission of a claim to this Board. Otherwise, this Board has no right to consider the claim in question."

The fact that conferences were held at the local level does not satisfy the requirement of the Act. In Third Division Award 12499 the Board held:

"The purpose of the Railway Labor Act, Section 2 Second, was to encourage the confrontation of representatives of both sides as the best way to get agreement. It was intended by the Act and by Board decision that a serious effort to made to settle the claim by a conference before submission to this Board. This serious effort is not satisfied by a conference at the first level, between the Carrier representative who initiated the action which gave rise to the claim, and the local union representative. Of necessity, the serious effort must be at the top if it is to be meaningful."

Based on the fact that the Parties failed to comply with the provisions of the Railway Labor Act this Board lacks jurisdiction.

AWARD

Claim dismissed.

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 Fourth Division

Dated at Chicago, Illinois, this 22nd day of September 1994.