

United States Court of Appeals
For the Eighth Circuit

No. 16-1993

Cheri B. Dietrich

Plaintiff - Appellant

v.

Soo Line Railroad Company, doing business as Canadian Pacific

Defendant - Appellee

Appeal from United States District Court
for the District of Minnesota - Minneapolis

Submitted: December 7, 2016

Filed: December 12, 2016

[Unpublished]

Before SMITH, BOWMAN, and BENTON, Circuit Judges.

PER CURIAM.

Cheri Dietrich appeals the district court's¹ order denying her motion for default judgment and dismissing her action for failure to state a claim. Having jurisdiction under 28 U.S.C. § 1291, this court affirms.

After conducting careful review of the record, this court concludes that default judgment was properly denied because Soo Line Railroad Company filed a timely motion to dismiss or for summary judgment. *See Adams v. American Family Mut. Ins. Co.*, 813 F.3d 1151, 1154 (8th Cir. 2016) (de novo review of grant of motion to dismiss); *Comiskey v. JFTJ Corp.*, 989 F.2d 1007, 1009-10 (8th Cir. 1993) (abuse-of-discretion review of denial of motion for default judgment); Fed. R. Civ. P. 55(a) (default judgment is warranted when the defendant “has failed to plead or otherwise defend”); *Comiskey*, 989 F.2d at 1009-10 (default judgment is rare judicial act). This court also concludes the action was properly dismissed because the amended complaint was time-barred and did not relate back to the original complaint. *See* 45 U.S.C. § 153 First (r) (2-year statute of limitations for those seeking judicial review of NRAB award); *Gatlin v. Missouri Pac. R. Co.*, 631 F.2d 551, 554 (8th Cir. 1980) (statute of limitations period accrues on date NRAB issues decision); Fed. R. Civ. P. 15(c)(1)(C) (amendment of pleading that changes party against whom claim is asserted relates back to original pleading if, as relevant, new party receives notice or should have known of the action within the time period for service of complaint).

The judgment is affirmed. *See* 8th Cir. R. 47B.

¹The Honorable Patrick J. Schiltz, United States District Judge for the District of Minnesota, adopting the report and recommendations of the Honorable Becky R. Thorson, United States Magistrate Judge for the District of Minnesota.