



Award No. 4912

Docket No. 4849

2-C&O-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Southern Region)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carman Helper Tentative, William T. Stafford was unjustly dealt with when he was dismissed from the service of the Chesapeake and Ohio Railway Company on July 23, 1964.

2. That accordingly, the Chesapeake and Ohio Railway Company be ordered to reinstate Carman Helper Tentative, William T. Stafford with full seniority and compensate him for all time lost commencing July 23, 1964; eight hours each day, five days each week, plus all overtime occurring to his position and also restore hospital benefits to himself and dependents, life insurance and vacation rights including the days held out of service to be considered as compensated service for earned vacation; account of the aforesaid violation.

EMPLOYEES' STATEMENT OF FACTS: Carman Helper Tentative, William T. Stafford hereinafter referred to as the claimant, was regularly employed by the Chesapeake and Ohio Railway Company, hereinafter referred to as the carrier, in its shops at Raceland, Kentucky, known as the Raceland car shops as a carman helper upgraded to a carman tentative in accordance with his seniority as a carman helper, with a work week Monday through Friday, rest days Saturday and Sunday first shift.

Under date of June 16, 1964 the carrier's shop superintendent, W. O. Bradley addressed the following letter to the claimant:

Mr. William T. Stafford
Rockcamp, Ohio

"Russell, Kentucky
June 16, 1964t
B-117-2-s

Dear Sir:

Attend investigation to be held in Shop Superintendent's Office, Russell Car Shop, 10:00 A. M. Tuesday, July 7, 1964.

CONCLUSIONS: The carrier has shown that:

- (1) The claim should be dismissed due to procedural defects.
- (2) Without prejudice to the "Carrier's position" stated in (1) above, the claim should be denied on its merits because:

(a) Rule 21 provides that an employe absent on leave, who engages in other employment, will lose his seniority unless special provision has been made therefor by the proper official and committee representing his craft.

(b) Through testimony of witnesses and his own admission, it was determined conclusively that Stafford, while on leave allegedly because of sickness, engaged in other employment without special provision being made therefor by the proper official and committee representing his craft.

(c) Under the automatic and self-executing provisions of Rule 21, Stafford forfeited his seniority.

(d) Stafford was not disciplined by dismissal, as contended by the Employees, but was given a hearing to afford him every opportunity to protect his rights.

The claim is without merit and it should be denied.

FINDINGS: The Second 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 waived right of appearance at hearing thereon.

Claimant reported off on April 7, 1964, for illness. Several weeks later the Superintendent of Car Erection telephoned him and was told that he would return to work the following day, which was June 14th. However, he did not return until the 15th, and on the 16th was given written notice to appear on July 7th for an investigation on the charge of engaging in other employment in violation of Rule 21. He was not suspended and apparently continued to work until discharged on July 23rd.

The first clause of paragraph (b) of Rule 21 provides as follows:

"An employe absent on leave, who engages in other employment, will lose his seniority unless special provision has been made therefor by the proper official and committee representing his craft."

At the investigation Claimant testified that he went to the hospital on April 7th, that the doctor told him to lay off until he felt better, that on June 3rd he telephoned and asked for a pass so that he could go to Detroit to see his

boy who had been badly burned, but was told that he had no seniority; that: "It made me mad and I said, 'forget about it.' I figured I didn't have no job here then, so I figured I would go to work for Darrell, and that way I could get a car and money to go back and forth to see my boy. We were looking for him to die any time." There was an argumentative but not positive denial of his statement concerning lack of seniority. Other witnesses quoted him as saying that he would not go back, or that he would resign, because of this occurrence. It thus appears from the record that his outside employment while still on sick leave resulted from a situation of hardship or emergency.

However it is clear that provisions such as Rule 21(b) are mandatory and self-executing (Awards 111, 509 and 2394 without referees; also Awards 1581, 3268 and 4088), and cannot be unilaterally waived by the Carrier, since the prior permission must be obtained from the organization as well as the Carrier. Therefore we cannot escape the fact that by violating the rule Claimant lost his seniority. The hearing did not cause this loss; it merely established the fact that it had occurred, and that he must therefore be relieved from his position.

However, as Claimant was allowed to return to the service on June 15th, 1964, after his loss of seniority and prior to notice of hearing and worked until removed from service on July 23rd, he appears to have regained seniority as of June 15, 1964, and therefore to be entitled to such reemployment as that seniority may afford him.

AWARD

Claim sustained for Claimant's reinstatement in the service with seniority as of June 15, 1964, but denied in all other respects.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1966.