

The Second Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

Parties to Dispute: (System Federation No. 4, Railway Employees
(Department, A. F. of L. - C. I. O.
(Carmen
(The Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

1. That Carman, Harry T. Soard's name has been unjustly removed from the Carmen's seniority roster at Stevens, Kentucky as result of hearing held June 1, 1973 in conference room, Stevens Shops, Silver Grove, Kentucky.
2. Accordingly Carman, Harry T. Soard's name should be restored to the Carmen's seniority roster at Stevens, Kentucky and Soard is entitled to be compensated for all time lost account being improperly held out of service, commencing May 14, 1973.

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.

The facts out of which this claim arose are not in dispute. Claimant Harry T. Soard was employed by Carrier as a freight car repairer (Carman) at Stevens, Kentucky. The uncontroverted record shows that during 1973, while on furlough status as a Carman, Claimant was afforded Temporary Employment During Furlough (TEDF) as a yard brakeman at Stevens. Claimant was recalled to service as a freight car repairer on April 9, 1973. On Monday, May 14, 1973 Claimant was assigned to work as a Carman on the second shift 3:00 p.m. to 11:00 p.m. There is no doubt, and indeed Claimant admits, that he telephoned his Acting Foreman at 2:05 p.m. on May 14, 1973 and marked off his regular carman's position in order to work instead a yard brakeman's position. Thus, Claimant did work the second shift yard brakeman's position

3:00 p.m. to 11:00 p.m. after marking off his Carman's position. Therefore, by letter dated May 15, 1973 Claimant was informed as follows:

"Hearing will be held at 1 P.M. Friday, May 18, 1973, in the Conference Room, Stevens, Kentucky, at which time you will be given opportunity to show cause, if any, why your name should not be dropped from the Carman's Seniority Roster, Stevens, Kentucky, under the provision of Rule 21(b) of the Shop Craft Agreement.

"This letter will also advise you that you will not be permitted to work as Carman pending hearing and decision in this case."

Following a hearing finally held after adjournment on June 1, 1973, Claimant on June 15, 1973 received the following notification:

"It has been found, as the result of this hearing that you failed to protect your Carman assignment and therefore, were in violation of Rule 21(b) of the Shop Craft Agreement and your name has been dropped from the Carman's Seniority roster at Stevens, Ky."

The Organization presented the instant claim for Mr. Soard on July 10, 1973 alleging that Claimant's name was improperly removed from the Carman's Seniority Roster and seeking his reinstatement to same. The underlying basis for this position was stated in the Local Chairman's letter of July 10, 1973 to wit:

"Rule 21 of the Carman's Agreement does not specifically prohibit a Carman from marking off his assignment as Carman on a daily basis and performing service in another craft covered by another agreement."

Finally, the Organization argues that Claimant was unjustly "disciplined" and that "removal from service" is too severe a penalty for the offense involved.

Carrier maintains that this is not a discipline case at all but rather that Soard's removal from the list is a self-executing phenomenon and specifically provided for in Rule 21(b). Thus, Carriers set forth its basic position in the final denial letter dated November 29, 1973 as follows:

"Contrary to your contention, Rule 21(b) of the Shop Crafts Agreement is applicable to this case. There was no special provision made as required by that rule to permit Soard to engage in other employment while on leave from or marked off his regular assignment. The provisions of Rule 21(b) are mandatory and self-executing. Having developed at the hearing that Soard had engaged in other employment without special provisions being made to cover, the rule

specifically provides that he lose his seniority. You refer to Soard's loss of seniority as discipline however Soard was not disciplined. The hearing did not cause this loss, it merely established the fact that such loss had occurred and that his name must, therefore, be dropped from the Carmen's Seniority Roster. Had this not been done, Carrier would have been in violation of Rule 21(b). You point out that Soard was allowed vacation pay in the pay period ending September 21, 1973 at the carmen's rate of pay, however, the allowance of such payment is immaterial to the issue here involved. The fact still remains that Soard forfeited his seniority as carman May 14, 1973, as was ascertained at the June 1, 1973 hearing. Actually, it would have been proper to allow the vacation pay due him at that time, however, this was overlooked and the vacation pay was not arranged for until Soard made request for same."

We concur with Carrier that this is not a discipline case as such. Rather, the sole question presented on this factual record is whether Claimant violated Rule 21(b) by marking off from his Carman job to work a brakeman's job on the same shift. The applicable contract language reads in pertinent part as follows:

"Rule 21. Effective Oct..16, 1947. (a) Employees will not be permitted to lay off from work without first securing permission. The arbitrary refusal of a reasonable amount of leave to employees when they can be spared, or failure to handle promptly cases of sickness or business matters of serious importance to the employees is an improper practice and may be handled as unjust treatment under these rules and regulations.

"(b) An employee 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. An employee absent on leave, whose place is filled by another employee, must give his foreman notice sufficiently in advance of the time that he will report for work to enable the foreman to transfer the one filling his place to his regular shift.

"(c) Leave of absence other than for sickness in excess of 30 days shall be in writing, and copy will be furnished local committeeman of the craft.

Understanding--Negotiated Fe. 9-22, 1922.

"(1) An employee cannot accept employment while on a business or pleasure trip without losing his seniority, but provisions will be made for an employee to accept employment when on leave of absence, without losing his seniority, when justifiable reasons can be shown and the railroad can spare him from service.

"(2) Notice sufficiently in advance of the time an absent employee on leave will report for work must be given the foreman to enable him to transfer the one filling the absent employee's place to his regular shift before returning to work." (Emphasis added.)

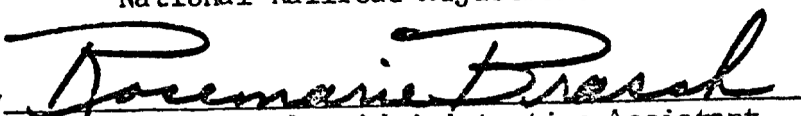
The Awards cited by the respective parties are not directly on point with this case and none is dispositive of the question presented here. But our Award 4912 is instructive as to the nature of Rule 21(b) and the effect of its violation by an employee who engages in "other employment" while absent on leave. And Award 6458 presents a case similar enough to the present dispute to provide meaningful precedent. In our considered judgment Claimant Soard did violate Rule 21(b) by his admitted actions on May 14, 1973 thereby incurring that Rules' automatic consequences. The claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 19th day of March, 1976.