Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7536
SECOND DIVISION Docket No. 7402
2-ICG-EW-'78

The Second Division consisted of the regular members and in addition Referee Arthur T. Van Wart when award was rendered.

Parties to Dispute: (System Federation No. 99, Railway Employes' Department, A. F. of L. - C. I. O. (Electrical Workers)
(Illinois Central Gulf Railroad Company

Dispute: Claim of Employes:

1. That the Illinois Central Gulf Railroad violated the current agreement, particularly Rules 22 and 37 of the Section "A" agreement when they refused to grant a leave of absence to Electrician J. D. James, III on May 19, 1975 at Memphis, Tennessee and furloughed Electrician, C. E. Kirkling, Jr.

2. That the General Foreman, W. E. Buell, failed to properly disallow claim in his letter, dated July 15, 1975 in accord with Rule 37 of the agreement.

3. That accordingly, the Carrier be ordered grant the leave of absence to J. D James, III and Electrician, C. E. Kirkling, Jr. be compensated for each day he was furloughed because the leave was not granted for eight (8) hours at the pro rata rate with all rights and benefits restored, including pay for insurance, Health and Welfare Benefits and vacation.

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 J. D. James, III, an Electrician at Memphis, Tennessee, requested on May 19, 1975, authority for a leave of absence from his General Foreman, W. E. Buell in order that he might work full time for the U. S. Post Office. Such request was denied by the General Foreman. About a week thereafter, a force reduction in the apprentice ranks occurred in the Mechanical Department at Memphis. Electrician Apprentice C. E. Kirkling,

as a result thereof was furloughed on May 27, 1975. The Brotherhood of Electrical Workers' Local Chairman at Memphis filed claim, on June 11, 1975, alleging therein that Carrier violated Rule 22 by not granting a leave of absence on May 19, 1975 and requested that Claimant Kirkling be compensated for eight (8) hours each day that Claimant James is required to remain on his position, that Claimant James be granted the leave of absence that he requested, that it was a continuing claim for every day of violation and that he was awaiting a reply to the claim made in accord with Rule #37.

Claimant James, as the result of reporting ill and presenting a doctor's request therefore was given a thirty (30) day leave of absence on June 19, 1975. Carrier later ascertained Claimant James was working at the Walls, Mississippi Post Office and terminated him on July 15, 1975. Claimant Kirkling and several other apprentices were recalled to active service July 14, 1975.

Employees contend that the General Foreman violated Rule 22 when he refused to grant Claimant J. D. James a leave of absence, that Claimant Kirkling could have been working had such leave been granted, and that the General Foreman failed to definitely decline the claim in his July 15, 1975 letter. Said letter, in pertinent part, reads:

> "You state that the I.C.G. violated the Agreement, in particular Rule #22,on May 19, 1975, when it allowed General Foreman W. E. Buell, Jr. to refuse to grant a leave of absence to Electrician J. D. James, III.
>
> Due to the shortage of people in the Electrical Department at that time, Rule 22 plainly states that when the requirements of the service will permit, employees on written request, will be granted a leave of absence for a limited time. Circumstances did not permit that at this time.
>
> Even if the leave of absence had been granted Mr. James, it does not necessarily mean that we have to call back a furloughed employee.
>
> Mr. James was granted a leave of absence on request from Mr. R. L. Shelton from June 19, 1975 to July 15, 1975."

Carrier asserts that Rule 22 does not require that a leave of absence be granted in order to permit an employee to work for another employer, that even if such leave had been granted it would not have been cause for Claimant Kirkling, an apprentice, to have filled a journeyman's position, that the General Foreman's July 15, 1975 letter did properly set forth the reasons for disallowance and that the claim is procedurally defective because the Organization failed to timely reject the decision of the second officer in the appeal procedure.

Rule 22 - "Absence from work" - in pertinent part, reads:

> "When the requirements of the service will permit, employees on written request will be granted a leave of absence for a limited time, with privilege of renewal. An employee absent on leave who engages in other employment will lose his seniority unless special provision shall have been made in writing therefore with the proper official and committee representing his craft..."

Rule 37 - "Grievances" - in pertinent part, provides:

> "(a) ... should any such claim or grievance be disallowed the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, ..."
>
> "(b) If a disallowed claim or grievance is to be appealed such appeal must be in writing and must be taken with 60 days from receipt of notice of disallowance and the representative of the Carrier shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed,..."

The procedural bars raised by both parties must, upon review thereof fall. Rule 37, herein above quoted, has already been interpreted on this property by this Division in its Award 6387. The same issue, raised by the Employees here, was raised therein, to wit, that the phrase "disallowing the claim" was not, as here, contained in the letter giving the reasons for disallowing an appeal made by the Employees. Award 6387, as did Third Division Awards 9615 and 10368, held "that Rules such as Rule 37 above do not require specific language to accomplish disallowance of a claim". We likewise so hold here. Similarly, Carrier's contention that because the Local Chairman's rejection of the Master Mechanic's denial was not received until November 26, 1975, 61 days after the Local Chairman had received such denial, must also fall. The test, under Rule 37(b) was not to measure the time on the basis of "when" the representative of the Carrier "receives" the rejection of his decision for such basis was not contemplated or expressly included in the Rule. Rather, the test of measurement was whether the appeal and notification of rejection was taken and made within 60 days of the receipt by the party possessing the right to make the appeal. Rule 37 permits and requires that he must have a full 60 day period in

which to exercise the right of appeal. Thus, according to Carrier's figures, only 59 days of such period had elapsed. We therefore, hold that the Local Chairman's rejection was timely made.

Generally speaking, the primary obligation, under Rule 22 quoted herein above, rests with the employee to place a request for a limited leave of absence in writing. When such written request is presented to Carrier it then is obligated to consider it. If the requirements of service permit, such a leave, then requested leave of absence should be granted. It is otherwise mandatory. If the request is not granted then Carrier is obligated to assume the burden to demonstrate that it was unable, at that time, to grant such a request because of the requirements of service. However, it is implicit in Rule 22 that such requests are to be reasonable and justifiable. Carrier's obligation under Rule 22 is not all inclusive. It would be an unconscionable and an unreasonable construction of Rule 22 to hold that Carrier's mandatory obligation therein, to grant a requested leave in most circumstances, was intended to include a request for a leave of absence in order to permit an employee to engage in outside employment. That it was not so intended is best reflected by the second sentence of the rule. Said sentence clearly points up that whenever the question of outside employment is raised, or will be involved, such a request would require the mutuality of interest of three parties, to wit, the employee, the Carrier and the Union. If a different arrangement was made necessary whenever outside employment is involved in a leave of absence request, then it is reasonable to conclude that Carrier was not obliged by reason of Rule 22 to mandatorily grant such a request.

In the instant case there was no showing that Claimant Electrician J. D. James had made a request in writing for a leave of absence; but, arguendo, if he had the Board must hold that Carrier was not in violation of Rule 22 when it denied such a request.

The claim of furloughed Electrician C. E. Kirkling, Jr. is found to be without merit. There is no contractual nexus whereby said claimant, who was an apprentice, had a contractual claim to a Journeyman's position. There was no denial of the fact that even if a leave of absence had been granted Electrician James, Carrier could have left such position vacant, filled it with another employee or abolished such position.

In the circumstances found herein, the claims made will be denied.

A W A R D

Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 19th day of May, 1978.