

The Second Division ~~consisted~~ of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute : ( International Brotherhood of Electrical Workers  
( Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

1. That the Chesapeake and Ohio Railway Company unjustly dismissed Electrical Gary O. Glispie from service charging him with violation of Rule 21 of the Shop Crafts Agreement.
2. That accordingly the Chesapeake and Ohio Railway Company be ordered to restore Electrician Gary O. Glispie to service with his seniority unimpaired and compensate him for all time lost subsequent to May 25, 1978, and restore all other benefits he would have had if he had remained in service.

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 were given due notice of hearing thereon.

Before the commencement of his regularly assigned shift at the Raceland Car Shop on May 25, 1978, Claimant, an Electrician, left the premises. The Claimant asked a fellow worker to report him off duty but Claimant did not receive prior permission for his absence. Instead of protecting his assignment on this date, the Claimant worked for the Empire Steel Corporation. After an investigation held on June 1, 1978, the Carrier removed Claimant's name from the Electricians' Seniority Roster for allegedly violating Rule 21 of the controlling agreement.

According to the Organization, the Claimant resorted to a recognized method for reporting off work on May 25, 1978, and therefore, he was absent for a single day which is not a leave of absence within the meaning of Rule 21(b). The Organization contends that even if Claimant failed to properly report off duty, at most, he committed a violation of Rule 21(a). During the investigation, Claimant's representative asserted that it was common practice for employes to occasionally lay off their assignments to work at other jobs. The Carrier has acknowledged that, due to the demand for skilled craftsmen in the local labor market, employes (including electrical workers) often engage in other employment. Nonetheless, the Carrier argues that when the investigation disclosed that Claimant

marked off duty solely to engage in other employment, the Carrier had to remove Claimant's name from the roster under the self-executing provisions of Rule 21(b). According to the Carrier, Rule 21(b) does not involve discipline but treats the Claimant's decision to work for another employer as a voluntary resignation from the employment of the Carrier with the consequential forfeiture of seniority.

Subsection (a) and (b) of Rule 21(b) state:

"(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 sufficient in advance of the time he will report for work to enable the foreman to transfer the one filling his place to his regular shift."

The issue presented to us is how Rule 21 should be applied to the peculiar facts of this case. Under certain conditions, a single day of absence is covered by Rule 21(b) regardless of whether the Claimant has properly marked off duty. Second Division Award No. 7017 (Eischen). Thus, Rule 21(a) is not material to this dispute. Several past decisions of the Second Division have concluded that an employee who engages in outside employment without procuring permission must suffer the mandatory loss of seniority provided by Rule 21(b). Id.; Second Division Awards No. 7804 (Marx) and No. 8199 (Fitzgerald).

However, the facts of this controversy can be distinguished from those cases because here the Carrier knew it was prevalent practice for employees to engage in other employment. Under the extraordinary circumstances presented in this case, the Carrier partially waived the self-executing provisions of Rule 21(b). Therefore, Claimant's name shall be restored to the Electricians' Seniority Roster with his seniority unimpaired. Claimant's request for back pay and other retroactive benefits is denied.

A W A R D

Claim sustained to the extent consistent with our findings.

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 10th of March, 1982.