

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(St. Louis Southwestern Railway Company

Dispute: Claim of Employees:

1. That the St. Louis Southwestern Railway Company violated the terms of the controlling agreement when the name of J. D. Henderson was removed from the Seniority Roster of Carmen, Pine Bluff, Arkansas.
2. That the St. Louis Southwestern Railway Company be ordered to restore Carman J. D. Henderson's name to the Seniority Roster of Carmen, Pine Bluff, Arkansas, with all rights unimpaired, as required by Rule 24-4 of the controlling agreement.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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, James D. Henderson, first entered the service of Carrier as a Carman apprentice on date of July 10, 1968, and established seniority as a Carmen on February 20, 1974. At the time of the subject incident, in and around the months of October, November and December of 1978, Claimant was assigned as a Freight Car Welder at Carrier's Pine Bluff, Arkansas facility. Claimant's hours of service were 7:00 AM to 3:00 PM with Saturday and Sunday as rest days.

On date of October 23, 1978, Claimant laid off of work account sickness and as of December 6, 1978 was still off account illness. It is deemed that this layoff constituted a leave of absence, the record reflects that Carrier became aware, by a written communique dated November 20, 1978, that Claimant was engaging in work for another employer during the time he was on said leave of absence. This communique, from a Hattie B. M. Blaser, Secretary of the First Federal Savings and Loan Association of Pine Bluff, and attested to by a Robert Palmer reads in pertinent part as follows:

"James Henderson is an hourly employee whose duties consist of janitorial work done at night. He has been working on and off since 1963. He most recently started back on 10/16/78. He has been a good worker with no known physical limitations on amount of work or type of work done. He works with his father, Mr. Elijah Henderson."

As a result of the above information, Plant Manager J. C. Renfrow at Pine Bluff, acting on behalf of Carrier apprised the Claimant he had forfeited his seniority and accordingly had been dismissed from service through removal of his name from the seniority roster. This letter reads in whole as follows:

"Our records show you to have laid off account sickness October 23, 1978, and that you have not protected your assignment as Freight Car Welder since that date.

We have information that commencing October 24, 1978 and on various other dates subsequent thereto you engaged in other employment during time you were off account alleged sickness, specifically, in performing janitorial services for a local savings and loan company.

Rule 14-3 of current Agreement provides that an employee off due to sickness shall be considered on leave of absence.

Rule 14-4 provides that 'An employee on leave of absence who engages in other employment will forfeit his seniority unless special provision shall have been made therefor with the proper official and Local Committee.'

Have no record of your having made arrangements to engage in other employment and therefore, under provisions of Rules 14-3 and 14-4 you have forfeited your seniority and your name has been removed from the seniority roster."

The record contains time cards from the First Federal Savings and Loan Association of Pine Bluff, showing that Claimant performed work on an hourly basis generally between the hours of 4:30 PM and 9:00 PM, in the five consecutive weeks beginning 10/16/78 and ending 11/13/78. In this five (5) week period, Claimant worked a total of 56 hours. Deleting the week of 10/16/78, for which Claimant worked a total of 14 hours and which predated the period Claimant was considered to be on leave of absence, Claimant then worked a total of 42 hours during the leave period. The record further reflects Claimant performed janitorial services for the Savings and Loan, that such employment commenced in 1963, predating his employment with Carrier by about 5 years and that such work was performed on an irregular basis. In fact, there were years between 1963 and 1978, in which Claimant performed no service for the Savings and Loan. Evidence of record purports to show Claimant performed no service at all in the years 1976 and 1977, and that he only performed two months of service in 1978, earning total compensation in the amount of \$201.41.

The Organization assumes the central thesis that Claimant's janitorial duties were performed intermittently and for short periods of time with very little remuneration and as such, this kind of employment cannot be construed as the type of employment contemplated in Rule 14-4 of the Controlling Agreement bearing effective date of October 1, 1977. In support of its position, the Organization cites the dictionary definition of employment as set forth in Webster's as,

"business, vocation, calling, office, service, trade, or profession ***."

The Organization asserts that most of Claimant's work at the Savings and Loan was only part-time and that he engaged in such work for the primary purpose of assisting his father. Thus, contends the Organization, it is impossible to view such work as constituting other employment.

In review of all the evidence of record we are persuaded that the work performed by Claimant at the Savings and Loan at Pine Bluff was indeed de minimus in nature and in that context cannot be viewed in a technical sense as constituting other employment as envisaged by Rule 14-4 of the Controlling Agreement. However, we find Claimant's working at the Savings and Loan during the period he was off work from Carrier's employ on account of illness to be of great impropriety. If Claimant was too sick to perform his duties as a Carman then certainly his working at the Savings and Loan must have had some adverse impact on his recovery, no matter what type of duties he was performing, thus delaying his return to work at Carrier's facility. We wish to make clear to Claimant his judgment was misguided when he made the decision to work at the Savings and Loan while off sick from his regular job. Notwithstanding our strong feeling Claimant acted improperly, we have decided to reinstate Claimant and to give him another chance to continue his employment with Carrier. Claimant is cautioned by this Board not to act in any manner which in any way would jeopardize this new beginning.

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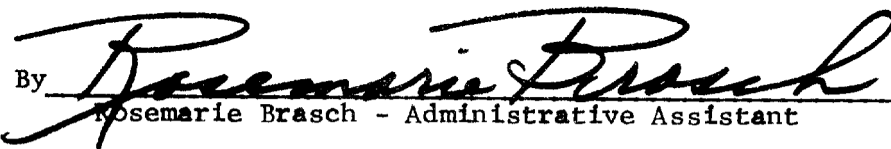
The Board directs Carrier to reinstate Claimant with seniority unimpaired, but without entitlement to any monetary benefits of any kind.

Claim sustained as per Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 17th day of March, 1982.