

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13120
Docket No. 13035
97-2-95-2-23

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Fireman & Oilers
(CSX Transportation, Inc. (former Baltimore and Ohio
(Railroad Company)

STATEMENT OF CLAIM:

- “1. That under the current and controlling agreement, Firemen and Oiler L. T. Nemphos, ID# 521496 was unjustly removed from the F&O seniority roster on January 14, 1994 by CSX Pier Manager, G. S. Kallweit.
2. That accordingly, Firemen and Oiler L. T. Nemphos be restored to his position with the CSX Transportation, Inc., be made whole for all lost time, with seniority rights unimpaired, vacation, health and welfare, hospital and life insurance benefits be paid effective January 14, 1994, the payment of 10% interest rated (sic) added thereto.”

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 were given due notice of hearing thereon.

The significant events leading to this claim arose on July 30, 1993 when the Claimant requested a 90 day leave of absence because of a "matter of personal concern." The Claimant's request was granted on that same day. Subsequently, at his request, his leave of absence was extended to February 5, 1994.

On January 12, 1994, the Carrier received a letter from another employee (in the same craft as the Claimant) who contended that the Claimant was employed in a non-railroad job. The employee further alleged that if the Carrier permitted the Claimant to return to its service, the Carrier would be in violation of Rule 34(b) of the parties' controlling Agreement.

Upon investigation, it was found that the Claimant had been employed by an auto dealership during the period between August 2, 1993 and January 7, 1994. The Carrier, subsequently by letter dated January 14, 1994, advised the Claimant that pursuant to Rule 34(b) he had forfeited his seniority and, therefore, his name was removed from the seniority roster.

Rule 34 - Leave of Absence, in pertinent part reads:

"(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."

At the outset, the Carrier maintained that Rule 34(b) is a self-executing provision of the parties' Agreement and that the application of its provisions are not subject to a discipline Hearing.

The language in this Rule is clear and unequivocal. Specifically, if the Claimant engaged in other employment, he was required to obtain the concurrence of the Carrier and the "committee representing his craft."

We agree with the Carrier that the consequences of a self-executing rule (as we find here) are not subject to a discipline Hearing. However, because the Carrier agreed to conduct a Hearing, this Board also examined the merits of the case.

The Claimant's basic defense is that he was unaware that he needed a "special provision" to engage in other employment.

With respect to this defense, a claim of ignorance runs counter to many previous decisions which have held that a lack of knowledge of the Rules is not a proper excuse for an offense. Nonetheless, from our reading of the evidence, we conclude that the Claimant was aware of the requirements of Rule 34(b). In this respect, we particularly note the Claimant's original request for leave of absence on July 30, 1993 and his testimony during the Hearing held on this matter, especially his statement that "proper procedure wasn't followed."

For all of the foregoing reasons, the claim must be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 6th day of May 1997.