

Award No. 1581
Docket No. 1493
2-UP-CM-'52

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Carroll R. Daugherty when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That under the current agreement Carman Joe Amato was unjustly discharged from the service of the carrier at the close of business August 7, 1951 and that accordingly the carrier be ordered to reimburse this employe for all wage loss resulting from said dismissal.

EMPLOYEES' STATEMENT OF FACTS: Carman Joe Amato, hereinafter referred to as the claimant, entered the service of the carrier as a carman apprentice at Omaha, Nebraska, June 8, 1938. He was advanced to position of carman September 19, 1942. He remained in service as a carman from September 19, 1942, until the date of dismissal August 7, 1951, except while on leave of absence from May 13, 1944, to July 1, 1946, in military service and from November 12, to December 13, 1948, account personal illness.

Under charge of having engaged in outside employment without proper authority, in violation of carrier Rule 702 of the rules and instructions of the M.P.&M. Dept., effective July 15, 1943, the claimant submitted to a question and answer investigation on July 18, 1951, a copy of which is submitted and identified as employees' Exhibit A.

Under date of August 7, 1951, the claimant received formal notice that he was discharged from the company's service effective at the close of business August 7, 1951. A copy of discharge notice is submitted and identified as employees' Exhibit B.

Due request was made upon the carrier that the claimant be reinstated with rights unimpaired and compensated for all wages lost resulting from this dismissal, which was declined by the highest designated officer of the carrier.

The carrier subsequently agreed to permit the claimant to resume service on a leniency basis, without prejudice to final determination of the question of compensation for time lost. This is supported by General Chairman Kaiser's letter of October 1, 1951, addressed to Mr. D. S. Neuhart, gen-

position as described in our letter of October 1, 1951." (Copy of this letter submitted as carrier's Exhibit G.)

Claimant Amato was reinstated to the carrier's service on December 12, 1951.

POSITION OF CARRIER: Claimant Amato was discharged from the carrier's employment on August 7, 1951, following hearing held July 18, 1951, at which he was charged with having:

"* * * engaged in outside employment without proper authority in violation of Rule 702 of the Rules and Instructions of the Motive Power and Machy Dept. * * *" (Page 1, Transcript, carrier's Exhibit A)

The organization has challenged this action of the carrier and asserts that Claimant Amato was "unjustly discharged" and seeks from this Board an award directing the reimbursement of Claimant Amato for "all wage loss resulting from said dismissal." This is not a case involving the right of an employe to engage in outside employment but is merely a case involving an employe's intentional failure to comply with a reasonable rule of the carrier, namely that employes will not engage in other business "without proper authority."

There is no dispute between the parties as to the fact that Claimant Amato did engage in outside employment and without having obtained proper authority. In fact, Claimant Amato never even attempted to seek such authority. It was proven at the hearing and admitted by Claimant Amato that he had worked in outside employment. (See page 3, Transcript, carrier's Exhibit A.) The position taken by the organization at the hearing was that:

"Mr. Amato did not need any authority from any official of the Union Pacific in the shop to work outside of the shops, as the 4 hours did not interfere with his duties on the Union Pacific property * * *" (Page 4, Transcript, Carrier's Exhibit A.)

There is thus no disagreement as to the facts. Mr. Amato chose to deliberately violate this rule and the organization seeks the approval of this Board for his deliberate violation.

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.

The parties to said dispute were given due notice of hearing thereon.

After an investigation and hearing (July 18, 1951) on the charge of his having violated the carrier's unilateral Rule 702 in the book of Rules and Instructions of the carrier's MP&M Department, Carman Joe Amato was discharged on August 7, 1951. The carrier interpreted Rule 702 as requiring an employe not to engage in "outside" business or employment after regular work hours without permission from appropriate supervision. It is agreed by the parties that Amato did engage in such outside work for a small contracting firm. About two months after his discharge, Amato was reinstated on December 12, 1951 to service with the carrier upon agreeing to comply with carrier's rules as thus interpreted. This action was taken without prejudice to either side's position in respect to the instant claim.

It is settled opinion that, when a man accepts and maintains employment with a firm, he makes an individual contract with his employer under which he is subject to the terms of any collective bargaining agreement negotiated with his employer by the duly accredited representatives of the employe group to which he belongs, and under which he is also subject to any unilateral rules of his employer that are not in conflict with law or with the terms of the collective bargaining agreement. Rule 702 was one of the latter class. When Amato was hired, he agreed to be bound by its terms.

However, Amato did not necessarily agree to the interpretation put on Rule 702 by the carrier in the instant case. He may well have thought the Rule meant what the organization now says it does, namely that the restriction on any employe's outside work is confined to the hours during which an employe is assigned to his regular position with the carrier.

This possibility confronts us with the task of interpreting the carrier's unilateral Rule 702. We hold we are empowered to interpret a unilateral rule by the language of Section 3(i) of the Railway Labor Act, as amended. We think that paragraph gives jurisdiction to this Board over disputes between individual employes and their railroad employers in respect to interpreting a rule like the one before us now.

Two reasonable interpretations are possible for the relevant portion of Rule 702—either the one used by the carrier in this case or the one supported by the organization. But by virtue of the unilateral nature of the rule and because the carrier's interpretation thereof was supported by its notice of December 6, 1950, there is a presumption in favor of the carrier's interpretation; and the latter must be allowed to stand unless the organization succeeds in establishing its plain unreasonableness.

We do not think the organization has sustained this burden. Nor do we deem the carrier's interpretation to work undue hardship on the employes. Rule 702 does not absolutely prohibit all "outside" employment; it merely requires proper supervisory permission for such employment.

There is no showing in the record that this rule as interpreted by the carrier was in conflict with any term of the effective agreement which controls the relations of the parties nor does the record establish that Rule 702 provides "leverage" to the carrier for undermining the advantages accruing to employes under the agreement. Further, the petitioner and his representatives have not sustained in the record their burden of establishing that any provision of collective bargaining Rule 37 on Discipline was violated by the carrier. That is, we do not find that the carrier failed to notify Amato of the precise nature of the charge against him or to accord him a full and fair hearing. We judge also that the discipline imposed, which amounted to a suspension, was not incompatible with Amato's proven breach of Rule 702 as interpreted by the carrier. Accordingly we do not presume to overturn the action taken by the carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November, 1952.