

Award No. 2394

Docket No. 2365-1

2-NYC-1-'57

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

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**PARTIES TO DISPUTE:**

**ROBERT GROGAN, CARMAN (Individual)**

**NEW YORK CENTRAL SYSTEM**

**CLAIM OF EMPLOYEE:** 1. That under the controlling Shop Craft Agreement, Carman Robert Grogan (herein called Claimant) was improperly and unjustly deprived of his seniority February 23, 1956.

2. That accordingly the New York Central System (herein called Company) be ordered to reinstate Claimant's seniority rights unimpaired and to compensate him for all time lost since February 23, 1956.

**STATEMENT OF FACTS:** Claimant is 54 years of age and a car inspector at company's Stanley Yards, Toledo, Ohio. He first entered company's employ May 17, 1920 and after receiving a certificate of satisfactory service moved to Toledo in 1928. He has been continually in company's employ at Toledo, Ohio, since August 29, 1928, and his seniority dates from this time. He is a member of the Brotherhood Railway Carmen of America but at one time was a member of a rival union. Up until February 23, 1956 he had never been disciplined by company and had an excellent work record.

In the spring of 1955, claimant's wife, who has been ill since 1950, was advised by her physician that a move to California might help her condition and recommended to claimant that he take his wife to California for two or three months to see if the change of climate would help her. Accordingly, on July 5, 1955, claimant applied for and was granted leave of absence from July 11, 1955 to October 10, 1955. At the time claimant applied for and was granted leave of absence claimant's local foreman knew of the reason for the request, viz: his wife's protracted illness, and the great expense involved to claimant. Actually, the illness of claimant's wife had drained claimant's finances to the point that he could not afford to make the trip to California but felt compelled to do so by reason of the doctor's recommendation. Claimant and his family, consisting of his wife and small son, travelled to California by automobile and a short time after arriving in California, claimant found that by reason of his wife's illness and the attendant expenses that he had insufficient funds to maintain his family in California during the period of the leave of absence and was compelled by reason of such circumstances to engage in other work with the Harbor Belt Railroad. His wife's condition did not improve and claimant and his family returned to Toledo and claimant returned to his work before the expiration of his leave of absence on or about October 3, 1955. Between the time he became a member of the Union (Brotherhood Railway Carmen of

returned on October 3, 1955 prior to expiration of the authorized 90-day leave of absence.

While the claimant was on leave of absence, the carrier's local official at Stanley Yard was notified by the accredited representative under the applicable agreement that he was in possession of information indicating the claimant was engaged in gainful employment, in violation of Sec. (b) of Rule 21. Based on this allegation, the claimant's accredited representative under the applicable agreement requested that the claimant's seniority date of August 29, 1928 be forfeited because of such violation.

The representative was told that before carrier could take action on his request he would have to furnish proof of claimant's outside employment. This proof was not presented to the carrier until February 22, 1956. On Feb. 23, 1956, the claimant was informally interrogated by his general foreman in the presence of an accredited representative of his craft. The claimant at that time admitted to the charge of being gainfully employed while on leave of absence. The carrier, upon request of the representatives under the applicable agreement, then set a date for a hearing to determine all the facts relating to this charge. The hearing was convened on March 12, 1956 in the office of the general foreman. This hearing had been in session only a few minutes when the claimant asked for, and received, an adjournment of 10 days to prepare his defense against the charge. Upon reconvening the hearing on March 22, 1956, the claimant refused to testify other than to read a prepared statement outlining his counter-charges which had no bearing on the validity of the charges.

**POSITION OF CARRIER:** The carrier has lived up to its responsibilities under the applicable agreement by carrying out the intentions of Section (b) of Rule 21. The carrier did not attempt to enforce this provision without first establishing that the claimant had, in fact, violated his leave of absence by engaging "in other work" contrary to the provisions of Rule 21. After the carrier held a fair and impartial hearing to establish the facts, the claimant was found guilty of the charge. Therefore, the carrier has no other alternative but to request denial of the claim in the instant dispute.

**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.

The transcript of hearing held in accordance with Rule 36 of the current agreement discloses that during leave of absence the petitioner engaged in work for another carrier without any special arrangements having been made as required by Rule 21(b), therefore petitioner forfeited his seniority.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 21st day of January, 1957.