Award No. 5850
Docket No. 5692
2-KCT-FO- '70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 3, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O.
(Firemen & Oilers)

KANSAS CITY TERMINAL RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement, Laborer, W. J. Vanoy was unjustly dismissed from the services of the Kansas City Terminal Railway Company on August 9, 1967 and withheld from service until September 16, 1967, when he was returned to service, without compensation for time lost.

2. That accordingly the Kansas City Terminal Railway Company be ordered to compensate Laborer, W. J. Vanoy for all time lost from August 9, 1967 until September 16, 1967, both dates inclusive, a total of twenty seven (27) days at straight time rate, for said violation.

EMPLOYES' STATEMENT OF FACTS: Laborer W. J. Vanoy, hereinafter referred to as the claimant, entered the service of the Kansas City Terminal Railway Company, hereinafter referred to as the carrier, on September 1, 1949, continuing therein in uninterrupted service to August 9, 1967.

As evidenced by the record including the transcript of investigation, the claimant reported for duty at 8:30 P.M., August 4, 1967. On the way to his work location, he briefly encountered another of the carrier's employes, Electrician George Kostas. The claimant joined Mr. Kostas in walking towards the bulletin board, located immediately adjacent to a doorway in the wall separating the roundhouse from the shop. In approaching the bulletin board the claimant turned to enter the doorway, and Mr. Kostas passed on around to the outside of the claimant approaching the bulletin board.

It is reported that Mr. Kostas in some manner or another came in contact with the glass bulletin board, breaking the glass and incurring an injury to his right hand of undetermined extent.

Following this incident of August 4, 1967, the claimant received the following letter under date of August 9, 1967:

guess, the glass would sound, I turned. I jumped and turned and took one step through the door.

Q. Mr. Vanoy, you have testified that you heard, or you observed Mr. Kostas having some difficulty in walking in the roundhouse. I would like for you to clearify that somewhat, if you could.

A. Well, Mr. Apple, just like I stated, first thing I wasn't expecting any accident or anything of that nature. Just like I said, it's kind of hard for me to actually say really, you know, how — I mean, how he actually was off balance, stumbled, or what not, see, because it happened just like that, see (snapping fingers), and me looking towards, you know, the wall over there, and he was coming around, but see, I was on the side view of everything that was happening, see, and just like I say, I knew what was in front of me, and when I saw him coming forward, well, I knew what he was bound to come in contact with. I was instinct, I just jumped back and walked out the door. I didn't see anything. See, I heard the glass and, in fact, I jumped. I don't know why, but I guess it was because I knew that the glass was going to break and walked out, and that was it.

Q. Do you, Mr. Vanoy, know whether he did this by falling into it or whether he took his first and did it?

A. Well, no, I couldn't tell you that, because I didn't, really, see him on impact, see. I just, like I say, I was looking, well, I guess you would say in the general direction, but I wasn't pinpointing at nothing."

It is clear from Claimant Vanoy's testimony that he deliberately tried to avoid looking at the accident. However, Mr. Vanoy admitted he was present when Mr. Kostas was injured, and he made no voluntary report of the accident as required by Rule 43. He admitted he left the scene of the accident without determining whether Mr. Kostas was injured or required assistance.

The general notice to "General Rules for Guidance of Employes" provides, in part, that:

"The service demands the faithful, intelligent and courteous discharge of duty."

Under rule 43, an employe in carrying out the *"faithful" and "intelligent * * * discharge of his duty", particularly where he is the only witness, is obligated to determine the facts and make a full and complete report. Mr. Vanoy's violation was not an oversight, it was a deliberate and ill-conceived attempt to avoid his obligation as a Terminal employe.

CONCLUSION: Claimant Vanoy was properly dismissed for admitted conduct that constituted a violation of Rule 43. However, his past service record did warrant leniency, and he was therefore reinstated on September 16, 1967, resulting in a suspension of but 26 days.

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.

Carrier requested and was granted the opportunity to appear before the Board. At the hearing, at which Petitioner was also represented, Carrier asked the Board to dismiss all claims in this Docket on the grounds that they had been disposed of and were moot. In support of its position Carrier submitted a copy of a March 31, 1969 Release signed by Claimant. Additional papers pertaining to this Release were also presented. Petitioner objected to the Board receiving or considering these documents and suggested the claims in the Docket be disposed of on their merits.

The issues to be resolved here may be stated as follows: (1) Should the documents submitted by Carrier be received or considered by the Board? (2) If so, do they support Carrier's contention that the case is moot? (3) If the case is not dismissed, what shall be the disposition of the claims?

To better understand the nature of the initial problems, a brief chronology of events is set forth below:

August 9, 1967. Claimant William J. Vanoy, a Laborer who also served as Local Chairman of the Firemen and Oilers, was dismissed, after eighteen years' service, for "violation of General Rules for Guidance of Employes".

August 11, 1967. General Chairman A. C. Manley protested the manner in which the dismissal notice was issued (no precise charge), suggested that bias and prejudice were involved, and requested Vanoy's reinstatement with pay or, if that was not agreeable, that a hearing be held.

August 16, 1967. Superintendent W. R. Apple set August 22 as the date for a formal investigation of charges that Vanoy had violated Rule 43 of the General Rules. Specifically, Apple wrote, "at approximately 8:35 P.M. August 4, 1967 it has been reported you were a witness at the time Electrician George Kostas sustained an injury to his right hand at the bullletin board located in the roundhouse and you failed to report the incident as prescribed in Rule 43."

August 22, 1967. A hearing was conducted at which Mr. Vanoy appeared as the sole witness.

On the same day Vanoy submitted a written complaint to the Regional Office of the Federal Equal Employment Opportunity Commission, charging that he had been discriminated against by Carrier because of his race or color (EEOC Case File No. KC 68-8-42-E). He explained:

> "I have been employed by the company for 19 years as Laborer and the Company has refused to permit me to upgrade to any job other than Switching and Carman which would require a loss of seniority or to any job without sacrificing my seniority. As Local Chairman of International Brotherhood of Firemen and Oilers Shop Laborers Local 453, I have written many letters and held discussions trying to get the company to upgrade Negro employees with high seniority and because of this the company has harassed me during my employment and has taken reprisal by terminating me. The stated reason for my termination was violation of Rule 43, Guidance of Terminal Employees, which is not a part of the Federation 38 Agreement with the Kansas City Railway Company and which I state I did not violate."

Mr. Vanoy also alleged that Carrier had violated provisions of the Missouri Fair Employment Practices Act (Secs. 296.010 to 296.070, Missouri Revised Statutes), and his EEOC complaint was referred to The Missouri Commission on Human Rights (Case No. EMP 8/67-837 (FED)).

Since there is no reference in the Docket to either of these charges we do not know whether the Organization was informed of them.

Ausust 29, 1967. Superintendent Apple reaffirmed Vanoy's dismissal, finding that "you did witness the incident referred to and that you failed to report the property damage and personal injury as prescribed by Rule 43. . . Further, you admitted leaving the scene of the accident without determining whether the injured person required assistance when you stated, 'I knew the glass was going to break and walked out, ***' ".

September 1, 1967. General Chairman Manley appealed Management's decision to U. B. Llewellyn, Manager of Personnel, requesting reinstatement with seniority rights, and compensation for lost time.

September 16, 1967. At a conference concerning Vanoy's discipline, Superintendent Apple and Local Chairman H. J. Holder agreed that the employe would be reinstated, effective that date, with seniority and vacation rights unimpaired. This understanding, it was agreed, would not bar the Organization from progressing a claim for the time and pay lost (i.e., August 9 to September 16). This understanding was confirmed in writing by Mr. Apple on September 1888.

October 11, 1967. Personnel Manager Llewellyn denied the claim.

February 28, 1968. A final conference on the property was held, with no adjustment of the dispute.

May 7, 1968. The Missouri Commission on Human Rights issued a "notice of finding of probable cause." (There is no mention of this in the Docket.)

July 8, 1968. Petitioner gave notice to the Second Division of this Board that, within thirty days, it would submit an ex parte submission concerning Vanoy's treatment with a claim for 27 days' pay.

August 9, 1968. EEOC issued a decision finding "reasonable cause" to believe that the Carrier had engaged in an unlawful employment practice in violation of federal statute. (There is no mention of this in the Docket.)

October 25, 1968. Carrier filed its Ex Parte Submission with the Second Division.

March 31, 1969. Mr. Vanoy executed a general release of all his claims against Carier (State Commission, EEOC, Adjustment Board) in exchange for $469 (about 18 days' pay). Specifically, Vanoy agreed to "dismiss with prejudice, his foregoing claims against Terminal now pending before The National Railroad Adjustment Board. . ." The full text of the Release is as follows:

"RELEASE

WHEREAS, the undersigned, WILLIAM J. VANOY, was effective August 9, 1967, dismissed from the service of Kansas City Terminal Railway Company ('Terminal') as a laborer in Terminal's roundhouse, Kansas City, Missouri, for violation of Terminal's General Rules for Guidance of Employees, as the result of an incident occurring on or about August 4, 1967, and was re-instated by

Terminal to his former employment, on a leniency basis, effective September 16, 1967, with seniority and vacation rights unimpaired, and without prejudice to his claim for time lost as a result of his dismissal and re-instatement; and

WHEREAS, William J. Vanoy claims that his foregoing dismissal and re-instatement was in violation of the collective bargaining agreement between Terminal and the International Brotherhood of Firemen and Oilers, the collective bargaining representative on Terminal's property representing the class of employees to which the undersigned belonged, and to asssert his said claim, the International Brotherhood of Firemen and Oilers has filed and is prosecuting a claim against Terminal before the Second Division of the National Railroad Adjustment Board, docket 5692, pursuant to the Railway Labor Act; and

WHEREAS, the undersigned also claims that the foregoing action by Terminal was in violation of the Federal Civil Rights Act of 1964, and to assert his said claim has filed a complaint against Terminal with the Federal Equal Employment Opportunity Commission ('EEOC') which complaint was filed on or about August 22, 1967, under file no. KC68-8-42-E which complaint has resulted in a 'decision' by EEOC, dated August 9, 1968, finding 'reasonable cause' to believe that Terminal engaged, in connection with the foregoing in an unlawful employment practice in violation of said act; and

WHESEAS, the undersigned also claims that the foregoing resulted in a violation of the Missouri Human Rights Act, which claim resulted in a referral of the above-described complaint to EEOC to the Missouri Commission on Human Rights, and to a 'notice of finding of probable cause' by said Commission on May 7, 1968; and

WHEREAS, Terminal denies each of the foregoing claims, and that it is in any way indebted to or liable to William J. Vanoy on account of the foregoing, or for any other matters whatsoever, but it is nevertheless the desire and intention of the parties to settle and compromise any and all disputes between them:

NOW THEREFORE, to effect said compromise and settlement, Terminal has offered to pay, and the said William J. Vanoy has offered to accept the sum of Four Hundred Sixty-nine Dollars ($469.00) in full settlement and satisfaction of any and all claims or causes of action which said William J. Vanoy has or claims to have against Terminal by reason of the foregoing, or by reason of any matters contained in the record in any of the foregoing proceedings, and in pursuance of said offer and acceptance, Terminal has on the date hereof paid to said William J. Vanoy the sum of Four Hundred Sixty-nine Dolllars ($469.00), the receipt of which is hereby acknowledged, and in sole consideration thereof, the said William J. Vanoy hereby fully and finally forever releases and discharges Terminal from any and all claims, causes of action or demands in any way arising from, growing out of or connected with the incidents or occurrences described above, or embraces or involved in any of the foregoing proceedings, or in any way arising from, growing out of or connected with his employ-

ment by Kansas City Terminal Railway Company, it being the intention of William J. Vanoy to settle, compromise, release and discharge, and he does by this instrument so settle, compromise, release and discharge, any and all claims, rights, demands, causes of action against Terminal which he has or may have as the result of the above-described incidents and occurrences, or which are embraces in or referred to in any manner in any of the foregoing proceedings.

For the same consideration, William J. Vanoy agrees to dismiss, with prejudice, his foregoing claims against Terminal now pending before the National Railroad Adjustment Board, the EEOC, and the Missouri Commission on Human Rights.

William J. Vanoy recognizes and agrees that the sum paid to him hereunder is in partial satisfaction of wages which he would have earned had it not been for his foregoing dismissal and reinstatement, and understands and agrees that Terminal has withheld the sum of Ninety-five Dollars and Fifty Cents ($95.50) from and out of the proceeds of this settlement to satisfy William J. Vanoy's liability for Federal Income Tax, Railroad Retirement Tax, Missouri Income Tax, Kansas City Missouri Earnings Tax, and Kansas Income Tax, and that the net amount received by him hereunder is the sum of Three Hundred Seventy-three Dollars and Fifty Cents ($373.50)."

April 11, 1969. Carrier submitted its Rebuttal to the Second Division, making no reference, however, to the March 31, release.

April 18, 1969. The Missouri Commission for Human Rights approved Mr. Vanoy's stipulation that his claim before that body be dismissed.

October 21, 1969. Mr. Vanoy acknowledged receipt of $469 from Carrier.

December 8, 1969. At hearing before the Second Division, with Referee in attendance, Carrier submitted copies of (1) Vanoy's March 31, 1969 Release, (2) The April 18, 1969 State Commission's Stipulation for Dismissal, (3) Vanoy's August 22, 1967 EEOC complaint (which was still pending).

ADMISSIBILITY OF EVIDENCE

Petitioner urges that the Board reject as untimely the evidence submitted to at the Decceember 8, 1969 hearing. It is true, of course, that the Board's long-standing policy has been to deny parties the right to bring in information which was not referred to during the processing of the claim on the property. There is good reason for this rule since, often-times, the new evidence raises questions which the opposing party cannot properly rebut or which cannot be resolved without reopening the entire record.

There are occasions, however, when an exception to the policy is appropriate. Suppose, for example, subsequent to the final rebuttal submissions, but prior to Board decision, the parties amicably adjust the dispute. Would it not be appropriate for one or both of them to provide the Board with a copy of the settlement and suggest that the case be closed? While the circumstances here are not that simple, the issue posed is much the same, since Carrier asserts that, in fact, the disputee which gave rise to Mr. Vanoy's claim has been satisfactorily disposed of.

It might have simplified matters had Carrier informed the Board and Petitioner earlier of its position and recited the relevant facts in a written communication. Note, for example, that Mr. Vanoy's Release was signed prior to Carrier's rebuttal submission. Be that as it may, since the documents in question go to the basic question whether we should consider the caase open or closed, they will be given consideration.

IS THIS CLAIM MOOT?

Petitioner suggests that no weight be accorded the newly-introduced documents since (1) The claim in this Docket has been progressed in good faith by the Organization, (2) Vanoy has never assked the Organization to drop his claim; (3) The Organization's position as bargaining agent would be jeopardized if Carrier was allowed to deal directly with its employees and disregard the Organization's contractual rights.

Carrier, on the other hand, asserts that the Release constitutes a complete settlement of the matter before us and requires the dismissal of the claim. A money claim, Carrier affirms, can be settled without participation of the Organization. This position has been sustained in several Board decisions, including Award 4555 (Second Division), Award 16,675 (First Division) and Award 2087 (Fourth Division). Since Vanoy had been reinstated without conditions and with unimpaired seniority, the Organization now has no independent or collective interest to assert.

It is true that this Board has denied or dismissed various claims under circumstances somewhat similar to those here. However, a careful examination of the prior cases reveals several differences. Thus, in the cited decisions the claimants dropped their requests for compensation in exchange for reinstatement. For example: "It is not dispute that . . . the employe signed a waiver of any claim for compensation in consideration for his being returned to service with seniority and other rights restored." (Second Division Award 4555). ". . . Claimant agreed in writing to relinquish his seniority rights as a supervisor in consideration of his being reinstated 'on a leniency basis' as a freight car repairer." (Fourth Division Award 2087). "On March 23, 1950 he signed a statement on which in recognition of reinstatement he waived waived vacation and pay for time lost." (First Division Award 16,675). See also NBA No. 383, Award No. 17, Case No. 204. ". . . Claimant accepted an offer made to him by Carrier of reinstatement to his position solely on the basis of managerial leniency, with the express understanding that no claim would be progressed . . . for wages lost as a result of his dismissal. . ."

Moreover, these Carrier-Employe agreements were made on the property and were actually part of the case record. Thus, Award 4555: ". . . we yield to the weight of authority of prior awards and find that the claim must be denied because the employe settled his own claim on the property . . ."; Award 1392 (Fourth Division): ". . . it appears that this dispute has been finally settled on the property . . ."; Award 2087: ". . . since the claim here waived is a money and reinstatement claim without group precedent value, we will recognize the November 19, 1964 Agreement made on the property. . ."

Compare these facts with those in the present case. Here there was no claim for reinstatement since, 27 days after his discharge, the Organization negotiated Mr. Vanoy's return to work. Thus, Vanoy did not and could not reach a private understanding with Carrier similar to those which prompted the Board, in the cited cases, to deny or dismiss money claims.

Since he did not give up his money claim in consideration for reinstatement, it is apparent that other factors were at work.

It is signifficant, in this regard, that Vanoy's "settlement" was not made "on the property", as was true in the cited cases. As the newly-introduced documents make clear, his "settlement" followed issuance of a "notice of finding of probable cause" by the Missouri Commission on Human Rights and a finding of "reasonable cause" by the EEOC. While the details of the settlement discussions are not known, it is apparent that the Carrier-Vanoy agreement had the imprimatur and approval of the Missouri Commission and was negotiated under Commission auspices, if not directly by them. When Commissions of this kind find "probable cause", it is customary for them to assume a representative role in behalf of the aggrieved individual. Settlements are then worked out, normally, between representatives of the Commission and the respondent. The complainant, of course, must agree to the resolution of his claim.[1]

[1] The Rules of Practice and Procedure of the Missouri Human Rights Commission, effective December 15, 1965, provide in Article 2, Section 1(b), that "A complaint, or any part thereof, may be withdrawn only on written consent as hereinafter set forth: (1) If the request for withdrawal is made before the case has been noted for hearing, the written consent of the Investigating Commissioner or the Executive Director shall be obtained. . ."

Article 2, Section 2(c) provides in relevant part that "If the investigating Commissioner determines after preliminary investigation that probable cause exists for crediting the allegations of the complaint he shall report his findings to the Chairman and members of the Commission by mail or at a Commission hearing. The investigating Commissioner shall immediately endeavor to eliminate the unlawful discriminatory practice complained of by conference, conciliation and persuasion. . ."

State Human Rights Commissions and the Federal EEOC have functions to fulfill different from those of thee Adjustment Board. Thus, the Missouri Human Rights Commission administers that States' Fair Employment Practices Act, one of whose primary declarations is that "It shall be an unlawful employment practice (1) for an employer . . . (a) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, creed, color, religion, national origin, sex, or ancestry . . ." (Fair Employment Practices Act, Section 296.020)

In contrast, one of the prime purposes of The Railway Labor Act, it may be recalled, is "to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules or working conditions". (The Railway Labor Act, U. S. Code, Title 45, Chapter 8 Title I, Sect. 2)

Section 3. First. (i) of the Act, moreover, provides that "The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions . . . shall be handled in the usual manner up to and including the chief operating officer of the caarier designated to handle such disputes: but failing to reach an adjustment in this manner, the dispute may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board . . ." Nowhere in this or any other section of the Act can we find au-

thority for holding that a dispute, once submitted to The Adjustment Board, can be adjusted under the aegis of another federal or state agency. That is not to say that this Board should not give consideration to actions of sister governmental agencies, particularly where overlapping or duplicatory claims have been filed. It must be our finding, however, that since the federal and state agencies involved here are concerned exclusively with protecting individuals against discrimination based on race, color, religious creed, national origin, sex, or ancestry, their determinations, or even settlements reached under their auspices, are not necessarily controlling with respect to the disposition of Adjustment Board cases. We understand that, by the same token, a Board grievance disposition is not deemed necessarily determinative by EEOC or by state commissions of related claims filed under their respective statutes. With respect tto the particular case here, it may be noted, the Organization's allegation before the Board, in essence, is that Vanoy was improperly and unfairly suspended for 27 days under Carrier's rules, particularly Rule 43. The employe's complaint to tthe Missouri Commission and the EEOC was that he was discharged or suspended because of his race or color. Clearly, the contractual claim and the statutory claim do not necessarily call for the same resolution.

It is our finding, in the sum, that the "settlement" negotiated by Carrier and Vanoy under the aegis of the Missouri Commission on Human Rights is not necessarily controlling or dispositive of the Organization's claim in this Docket. The contractual claim is consequently not moot and will be considered on its merits.

VANOY'S SUSPENSION

The record reveals that, prior to August 4, 1967, Vanoy had eighteen years of unblemished service. In August he was discharged for violation of Rule 43 which declares:

> "In every case of accident a full and complete report must be made at once by every employe present, no matter whether he considers his statement of importance of not."

Carrier contends and Petitioner denies that Vanoy witnessed an accident involving George Kostas, a fellow employee, on August 4, 1967 at about 8:35 P.M.

As noted above, Vanoy was the only witness called to testify at the investigation of his discharge. Careful review of this testimony does not support Carrier's conclusions:

> 1. There is no direct evidence that an "accident" occurred, or that there was personal injury or property damage, as found in Carrier's August 29, 1967 reaffirmation of its decision.
>
> 2. Vanoy testified that he and Kostas were walking toward the roundhouse bulletin board. He (Vanoy) stopped as they approached it and "Kostas . . . came around from the side view of me — I saw him. I couldn't tell you exactly whether he slipped or tripped or— but anyhow he was in an awkward motion, going towards the board. Well, I knew what was in front of him and I knew what was beside me, as a glass bulletin board. Well, I jumped back and walked out the door . . . and went on back in the back shop. That was it."
>
> 3. When asked whether Kostas had been injured, Vanoy replied, "I really don't know". He stated further that "I saw where he was

coming into the glass, and then I just . . . stepped through the door. . . I didn't see him (Kostas) hit it." He had no conversation whatsoever with Kostas. He heard the glass and jumped back. Kostas did not ask for assistance.

4. Vanoy testified, "I didn't know I was a witness" to an accident. The roundhouse foreman did not ask him to submit a report. Later, a General Claim Agent requested a report, which he provided. As for Rule 43 Vanoy stated, "I didn't think that it would pertain to me, for the simple reason why, that I was not involved and I didn't see Mr. Kostas hurt himself. For that reason I feel that deeply, that I am unjustified for that charge. . ."

If there was, indeed, an "accident", within the meaning of Rule 43, the testimony at the investigation established, at the most, that Vanoy might have been present. He affirmed that he turned and walked before the "accident" occurred. His statement was not contradicted. Mr. Kostas, the only other person who had knowledge of the incident, was not called to testify. Consequently, no clear Rule 43 violation has been provbed.

True, Vanoy's conduct may be open to criticism. Perhaps he should have remained to see what happened and provide assistance, if such were required. While many persons don't want to "get involved" these days, that attitude, should it become prevalent could do great harm. Be that as it may, Claimant was disciplined, not for his attitude or his failure to get involved, but for violating Rule 43 and it is that charge which is being adjudicated here.

THE REMEDY

Rule 30 of the parties' Agreement provides that "If it is found that the employe has been unjustly dealt with, such employe shall be reinstated, with seniority rights unimpaired and compensated for the wage loss, if any, suffered by him". In the normal course of events Vanoy's claim for full back pay would be sustained in light of the finding with respect to the charges against him. However, we cannot ignore the fact that he voluntarily agreed, in writing, to accept $469.00 "in full settlement and satisfaction of any and all claims", including this contractual claim. His willingness to accept 18 days' pay, rather than await the outcome of this proceeding, constituted a calculated risk on his part. Had he waited, he would have received pay for the entire period. But there is no equitable basis for now granting him the nine das' pay which he voluntarily relinquished in March 1969.

AWARD

1. Carrier's request to dismiss this case as moot is denied.

2. Claimant W. J. Vanoy was unjustly dismissed and withheld from service for 27 days in 1967.

3. Claim for back pay is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 18th day of February, 1970.

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