Award No. 6073
Docket No. 5910-I
2-DW&P-I-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Don J. Harr when award was rendered.

PARTIES TO DISPUTE:

ROBERT L. OLSON, PETITIONER

DULUTH, WINNIPEG AND PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

"To summarize, it is my opinion that both the Union, Local 215 of the International Brotherhood of Firemen and Oilers of Virginia, Minnesota and the Carrier, the Duluth, Winnipeg & Pacific Ry. of Virginia, Minnesota, are at fault.

I charge the Local 215 with:

1. A failure to give me any protection or advice due a Union member.

2. Brothers, Lee Marconnet, Loren Norstrom, and James Joelson have not conducted themselves as honorable Union men should.

3. I have been denied the privileges of a hearing.

4. I have not had any written or oral grievances processed.

5. The Local 215 has failed to hold regular, scheduled, monthly meetings.

6. I have been discriminated against because I work two jobs.

I charge Mr. K. W. Bursch and the Carrier, Duluth, Winnipeg and Pacific Ry. with:

1. Mr. K. W. Bursch has, in my opinion, discriminated against me because my father, R. H. Olson, 921 21st Ave. W. Virginia, Minnesota, was a former employe and Local Chairman of the Brotherhood of Firemen and Engineers, and therefore, he used me as a 'tool' to get back at my father for his strong unionism.

2. Failure to treat me as a bonified employe:

a. I was not properly notified of my apparent dismissal.

b. I was denied a hearing.

c. I was not notified to return to work in October-December of 1968, when two non-Union employes worked 43 days that my seniority entitled me to work.

d. I was not notified in the usual and customary manner to return to work after I had won a posted job in February of 1969. My seniority was denied me again.

3. Displaying favoritism to certain employes — collusion.

Brother Loren Norstrom, allowed to change his days off without proper posting of such a change.

Brother Robert Drianis was permitted to return to a job he vacated for over one year.

Brother Lee Marconnet is allowed to leave the job at will for jobs not connected with his labor job. He is also allowed to rest at his convenience in a room that everyone is aware of, including the Roundhouse Foreman, Mr. K. W. Bursch."

PETITIONERS STATEMENT OF FACTS: My name is Robert L. Olson. I have four children, ages 9-15. My wife and I have lived at our present address, 406 Arlington Road, Hoyt Lakes, Minnesota, for over five years.

I was first employed with the Duluth, Winnipeg & Pacific Ry., Virginia, Minnesota, on September 10, 1954, as a laborer. In January of 1956, I took my week's vacation. During this week, I requested additional time off. I was granted this additional time off by Mr. Kermitt Bursch, Roundhouse Foreman. (It was verbal, not written permission). However, when I attempted to return to work, three weeks later, I was informed that I had "stayed away too long." Mr. Bursch stated that I had lost my job because he never gave me permission.

Naturally, I protested. But, to no avail. I didn't have anything in writing. Therefore, he requested that I sign my "rights" away. After a "heated" discussion, I complied to his request. I did this, signed Form 92 relinquishing my seniority, because of Mr. Bursch's constant, irritating remarks and Local 215's laxity to pursue the matter.

Later, in March of 1956, Mr. Bursch needed an employe, so I was hired. I started as a "new" man as far as seniority goes.

During the period from 1956-1960, I would "moonlight" whenever I could. (I worked for United States Steel Co., Virginia, Minnesota, periodically between December, 1953 to September, 1960). I did this because my family was growing larger and because I was usually layed-off from either the D.W. & P. Ry. or U. S. S. But in September of 1960, I quit my U. S. S. job and enrolled in college. During my college tenure, I worked the afternoon shift at the D. W. & P. Ry.

I worked steadily on the Railroad and continued in college until June of 1962. I had completed two years of college and I was now being layed-off the D. W. & P. Ry. due to a reduction in force.

I sold encyclopedias and worked as a bookkeeper from June to December of 1962.

The claimant was contacted by Mr. Bursch on 17 February 1969, who wrote Mr. Olson on 27 February, informing him he would have to report for work or resign. The claimant did not respond. Accordingly, a position worked by the claimant was bulletined which Olson bid on 14 March 1969. Olson, having been considered as resigned without notice by this time, the job (3:00 P. M. to 11:00 P. M.) was awarded to K. Kottke again, Mr. Olson did not contact the carrier. He did not do so until 26 May when he wrote Mr. Lundeen. It is of interest to note that Mr. Olson had been employed by the Aurora-Hoyt Lakes Schools up until 30 May 1969, between the hours of 8:30 A. M. and 4:15 P. M.

In conclusion the carrier submits Mr. Olson's resignation was not arbitrary, unreasonable or unjust. Rule 13 provisions precluded any other action being taken, particularly in view of the local's stand respecting outside employment.

In addition the claimant is not properly before your Division of the Board because he did not follow the recognized grievance procedure on the property nor did he exhaust all remedies available to him through the grievance procedure, i.e., steps 1, 3 and 4. Also the claimant, from 25 January 1969 to 26 May 1969, although cognizant of Rule 13 provisions, chose to ignore them.

Finally, the evidence indicates the claimant's allegations lack merit and fact and are, in addition, subject to procedural fault.

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.

The Claimant filed his claim, ex parte, before this Division without prior handling with the Carrier on the property.

The claim was not handled in accordance with the effective Agreement and as required by Section 3, First (i) of the Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board. The claim is improperly before this Board and will be dismissed. See Third Division N.R.A.B. Awards 18110 and 18149 (Dorsey), 18133 (Dolnick) and Second Division N.R.A.B. Award 6052 (Harr).

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1970.

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