

Award No. 6185
Docket No. 6065
2-C&O-MA-'71

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Machinist G. R. McClellan was unjustly removed from the machinists seniority roster under date of November 14, 1969.

2. That accordingly the Carrier be ordered to place the name of Machinist G. R. McClellan back on the seniority roster in accordance with his proper standing as of November 14, 1969.

EMPLOYEES' STATEMENT OF FACTS: Machinist G. R. McClellan, hereinafter referred to as the claimant was employed by the Chesapeake and Ohio Railway Company, hereinafter referred to as the carrier, for a period of almost 19 years or since January 2, 1951, and was as the time assigned to the first shift 7:00 A. M. to 3:30 P. M., Monday through Friday, rest days Saturday and Sunday in the carrier's Huntington Shop at Huntington, West Virginia. Because of health reasons, and under orders of claimant's Doctor, claimant was told he should not continue to work at his (machinist) trade while in his present condition, especially while the Doctor was trying to determine the cause of claimant's illness. Hence he wrote Carrier's Shop Superintendent, Mr. D. W. Walker under date of August 4, 1969 for a six (6) months leave of absence.

Claimant at the same time and date, addressed a letter to the President of Machinist Local Lodge No. 104, Mr. Robert A. Bryant requesting a six (6) months leave of absence because of health reasons.

Claimant's request was not an unusual one, and is provided for under the controlling agreement; however, claimant's request was declined under date of August 5, 1969 by Carrier's Shop Superintendent, Mr. D. W. Walker.

It will be noted in carrier's letter dated August 5, 1969 (Exhibit C) that Carrier is suggesting that claimant take a special physical examination in order to determine his physical condition.

absent from work without permission and an investigation was held to afford him opportunity to answer those charges.

- (2) During the investigation, it became evident through his own testimony, that Claimant McClellan, while laying off from his railroad job allegedly account personal illness, had been engaged in other employment without special provisions having been made therefor by the proper official and committee representing his craft.
- (3) Rule 21(b) provides that an employe 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.
- (4) Under the automatic and self-executing provisions of Rule 21, Claimant McClellan had forfeited his seniority and the Carrier had no alternative but to strike his name from the seniority roster.
- (5) Carrier would have been in violation of Rule 21 had Claimant McClellan been permitted to retain his seniority.
- (6) The fundamental issue here involved has been resolved by the Second Division of the Railroad Adjustment Board numerous times as evidenced by Award 4912 cited by the Carrier and the instant case should be similarly declined on the basis of Stare Decisis.

The request of the employes is without merit and should be denied in its entirety.

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 waived right of appearance at hearing thereon.

While retaining jurisdiction over this grievance, the Board has concluded that further data is needed to permit rendering of a final determination on the matter, and therefore it is remanding this dispute back to the property, solely for the purposes described below.

The Carrier and Organization are to jointly obtain from the grievant, G. F. McClellan, a letter authorizing his personal physician, Dr. R. R. Hagley, 2527-Third Avenue, Huntington, West Virginia 25703, to disclose in writing to the parties information regarding his medical and physical status, as indicated below.

Upon receiving signed "release" from G. R. McClellan, Carrier and Organization are to obtain in writing from Dr. R. R. Hagley, a report which provides:

1. Details of grievant's medical or physical complaints as of August 2, 1969.
2. Medical findings and the tests used and test results obtained on which such findings were based, diagnosis and prognosis as of August 2, 1969.
3. Further tests, if any, ordered as of August 2, 1969.
4. Detailed description of physician's advice to the grievant and the grounds for said advice, as of August 2, 1969.
5. Details of grievant's medical or physical complaints as of November 7, 1969.
6. Further medical findings and specific tests used and the details of the results thereof on which such findings were based and diagnosis and prognosis during the period between August 2, 1969 and November 7, 1969.
7. Further tests, if any, ordered as of November 7, 1969 and thereafter, and the results of same.
8. The medical grounds or reasons for Dr. Hagley stating in his memo of November 7, 1969 that grievant "is physically unable to return to his job."
9. If Dr. Hagley has continued to treat grievant since November 7, 1969 to date, what are the dates that the physician saw the grievant, and what are the grievant's symptoms during that period or changes therein; what further findings, if any, were made by the physician, what diagnoses and prognoses were made during the period November, 1969 to date and what is grievant's present medical status as of October, 1971, and the grounds upon which such conclusions are based.

The above report is to be forwarded to the Executive Secretary of the Second Division—National Railroad Adjustment Board, 220 S. State Street, Chicago, Illinois 60604, as promptly as possible, for study and consideration by the Board.

AWARD

Claim held in abeyance pending receipt of further data as described above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 29th day of October, 1971.

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