

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (System Federation No. 4, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
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(Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

1. That Carman, William Carman was unjustly dismissed from service as result of investigation held in the office of the Car Foreman at Fostoria, Ohio, Thursday, February 20, 1975 at 10:40 a.m. Mr. Phebus' letter of March 19, 1975 is not in conformity with the rules of our controlling agreement. The B.R.C. of U.S. and Canada was never notified by the company that the Railroad Company was going to do anything about the adjustment board award in this case. Carman is presently being held out of service by the company doctor, saying that Carman has a physical condition which will now allow him to return to work.
2. Accordingly, Carman is entitled to be reinstated with all seniority rights and vacation rights unimpaired and paid for all back wages lost commencing October 17, 1974 until restored to service.

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 employees 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.

On the basis of a previous award by the Board, Claimant was ordered restored to service by November 18, 1974, and was in fact recalled and was returned to the seniority list on November 12, 1974. On the same date, Claimant advised that he was ill and unable to return to work until after November 29, 1974.

He did not return and was again notified by the Carrier on January 23, 1975 to return to work. When he again did not report, a hearing into the matter was scheduled for February 20, 1975, although Carrier correctly points out that such a hearing was not required by the Agreement. In the meantime, Carrier learned that the Claimant had been employed elsewhere as a night watchman since April 30, 1974. At the hearing, Claimant freely admitted that he was employed elsewhere, although he emphasized that it was "light work", unlike his regular assignment with the Carrier.

With this information, Carrier claims that the Claimant is in violation of Rule 21(b) which states in part:

"An employe absent 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."

The Board finds that this Rule is self-executing, and that the Claimant has been removed properly from the seniority list. Despite the "light work" nature of the position, it is clearly "other employment", and there is no evidence that he sought any "special provision" from the Carrier or the Organization. The Rule is clear and must be enforced as written by the parties.

In addition, the record shows that Claimant was less than forthright or cooperative in supplying evidence of his physical status so as to justify his remaining away from his assignment after being notified on at least two occasions.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of June, 1978.