

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

Parties to Dispute: { System Federation No. 91, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Firemen & Oilers)
 { Louisville and Nashville Railroad Company

Dispute: Claim of Employee:

1. That under the Current and Controlling Agreement Service Attendant M. J. Brian was unjustly dismissed from the service of the L&N Railroad Company on June 8, 1977 by Mr. W. L. Ellison, Master Mechanic without the benefit of a formal investigation as provided for by the Controlling Agreement.
2. That accordingly, Service Attendant M. J. Brian be restored to his assignment at Strawberry Yards with all seniority rights unimpaired, vacation, health and welfare, hospital and life insurance be paid and compensated for all lost time, effective June 8, 1977 through July 14, 1977, both dates inclusive at the pro-rata rate of pay.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 June 8, 1977, the claimant's seniority was terminated under Rule 21(b) which states:

"21(b) An employee absent on leave who engages in other employment without the approval of the General Chairman and the Director of Personnel automatically severs his relations with the company."

The claimant was reinstated July 15, subsequently charged with what might be characterized as absenteeism and dismissed. The dismissal is a separate matter and is being handled by the Board in another case. The case before us only deals with time lost between June 8 and July 14.

The Organization argues that the claimant must be given a hearing before terminating his seniority under a rule such as 21(b). However, assuming arguendo that Rule 21(b) applies, we agree with the Carrier that a hearing is not generally necessary. The Board has held many times that termination under rules such as Rule 21(b), which call for automatic severance of seniority, do not require disciplinary hearings. As was stated in Third Division Award 21463 (Wallace):

"The Carrier maintains the disciplinary rule has no application here by virtue of Petitioner's automatic severance under Rule 23. A careful review of the awards compels the conclusion that Third Division Award 12993 (Hall) has application here. Similarly, the awards in other Divisions reach the same result: Fourth Division Awards 2832 (Weston) and 3135 (O'Brien); Second Division Award 7017 (Eischen). Award 6801 (O'Brien) of the Second Division, a case distinguishable on its facts, appropriately stated the rule:

'While the conclusion reached herein may appear harsh, it should be noted that Rule 18 is a self-executing rule providing for automatic loss of seniority... We are left no alternative than to apply the Rule as written and find that Claimant has forfeited his seniority.'

On this basis Petitioner forfeited her seniority under Rule 23(g) and Carrier did not violate the Agreement."

However, there is one serious defect in the Carrier's position. It has not been shown that the claimant was "absent on leave" within the meaning of the phrase used in Rule 21. The claimant was not absent on leave or on a leave of absence within the meaning of Rule 21. A leave of absence as used in Rule 21 refers to an absence which is specifically requested by the employee and formally granted by the Carrier. We are not prepared to say, however, that it must be granted in writing. The Carrier has presented no evidence that the claimant ever was granted a leave of absence under Rule 21. Before Rule 21(b) can apply a leave would have to have been granted under the general provisions of Rule 21. This was not done. The claimant was not on a leave of absence, but simply failed to protect his position on various dates. Considering that the claimant had not been granted a leave of absence under Rule 21, it would have been proper to proceed under the discipline rule, if Carrier had problems with claimant's dependability. Had he been granted a leave under Rule 21 and it was further shown he was engaged "in other employment" without the required approval specified in Rule 21(b), we would have agreed with the Carrier and a hearing would not have been necessary.

Under the facts and circumstances described hereinabove, we are compelled to sustain the claim.

Form 1
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Award No. 8085
Docket No. 7926-I
2-L&N-FO-'79

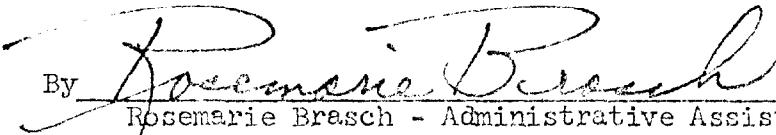
A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 12th day of September, 1979.