

The Second Division consisted of the regular members and in addition Referee Robert E. Fitzgerald, Jr. when award was rendered.

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

Dispute: Claim of Employee:

1. That Carman, F. M. Duttry's name was unjustly removed from the Carmen's seniority roster as result of investigation held in the office of General Plant Manager, Raceland Car Shops, 10:00 a.m., Friday, March 4, 1977 in violation of Rule 21 of the Shop Crafts Agreement and Employee Protection Agreement, dated November 11, 1974.
2. Accordingly, Duttry is entitled to be compensated eight (8) hours, each day, five (5) days each week at the carmen's applicable straight time rate until his name is restored to the proper position on the carmen's seniority roster, all days accredited towards qualifying days for vacation purposes, insurance on himself and family and all other benefits accruing to employees in 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 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.

This case involves a 26 year employee of the Carrier who was transferred from the facilities at DuBois, Pennsylvania to the facilities at Russell, Kentucky. The Claimant worked for one week and requested time off for the purported reason of attempting to find a residence in that area. Instead of looking for a residence, the Claimant returned to his home in Pennsylvania and began employment with another employer.

The Claimant contends that he was justified in leaving the Carrier facility in Russell, Kentucky because he was under financial hardship due to the Carrier's failure to pay a \$300.00 allowance provided for in the Coordination Agreement. The Claimant justifies his failure to appear at the hearing on a

continuing financial hardship. Finally, the Claimant contends that the discipline of discharge was arbitrary and capricious under the circumstances.

The Carrier contends that this is not a matter of discipline, but rather a question of the Claimant's having terminated his own employment by accepting employment elsewhere. Further, the Carrier contends that the question of the obligation to pay the allowance is not properly before the Board, because the interpretation of the Coordination Agreement must be issued by the method provided in the Agreement. Finally, the Carrier contends that it was not realistic to expect the payment of the allowance to the claimant on the date of his reporting, because it did not know until he appeared that he would accept the transfer.

This Board has decided in other cases that the violation of the provision of Rule 21(b) are mandatory and self-executing. Thus the Board said in Award 4912, involving the same parties at the same location as follows:

"However it is clear that provisions such as Rule 21(b) are mandatory and self-executing (Awards 111, 509 and 2394 without referees; also Awards 1581, 3268 and 4088), and cannot be unilaterally waived by the Carrier, since the prior permission must be obtained from the organization as well as the Carrier. Therefore we cannot escape the fact that by violating the rule Claimant lost his seniority. The hearing did not cause this loss: it merely established the fact that it had occurred, and that he must therefore be relieved from his position." (Emphasis added)

The argument of the Claimant that he was under severe economic hardship seems unrealistic in light of the long term employment with the Carrier. Further, no evidence was presented to justify the Claimant's contention.

The argument of the Carrier that the question of the obligation to pay the allowance is one beyond the scope of the hearing, is well taken. Therefore, no opinion is rendered on that point.

The Claimant's having voluntarily accepted other employment has resulted in his automatic termination from employment with the Carrier. On this basis, the claim will be denied.

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 5th day of December, 1979.