

**Award No. 10430**  
**Docket No. CL-12566**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Donald A. Rock, Referee**

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,  
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**WESTERN WEIGHING AND INSPECTION BUREAU**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-4955) that:

(a) The Bureau violated the Agreement between the parties, effective September 1, 1949, when it arbitrarily dismissed Steve Druk from its service on December 29, 1959:

(b) It shall now be required to restore him to its service, effective January 1, 1960 (at the close of his duly granted leave of absence) with all rights unimpaired, including vacation rights, and compensate him for all salary loss sustained retroactive to January 1, 1960 and for each work day thereafter until the violation is corrected.

**OPINION OF BOARD:** Claimant, Steve Druk, had been employed by the Bureau for several years prior to November 24, 1959. On that day he applied for and received a leave of absence from November 24, to December 31, 1959, "account of problems in health". His application was supported by a letter from Dr. Robert S. Clark of the Minneapolis Neuropsychiatric Clinic which stated:

"Mr. Steven Druk is under my care for a nervous condition and should not return to work until some time after February 1, 1960."

During the month of December 1959, while Claimant was on leave, Mr. E. H. Suess, District Manager for the Bureau, saw newspaper clippings which stated that Druk had taken part in wrestling matches during that month. On the basis of that information and his then unconfirmed assumption that Druk had been paid for the wrestling, he concluded Druk was "engaged in other employment," terminated his services and notified Druk thereof by letter dated December 29, 1959, as follows:

"Minneapolis, Dec. 29, 1959

E - E H S

S. Druk

## "CERTIFIED MAIL

"Mr. Steve Druk  
3300 Upton Ave. North  
Minneapolis, Minn.

It has been established that while you are on leave of absence, that you have been engaged in other employment, and as such, you have violated Rule 10 (c) of our present Working Agreement.

Therefore, I have no other alternative but to terminate your services with this Bureau, effective as of this date.

"/s/ E. H. Suess

"cc — Mr. D. J. O'Connell"

On the same day, he caused Druk's position to be Bulletined as a permanent vacancy for the stated reason that his services had been terminated under Rule 10-(c). It is contended on behalf of Druk that the action taken by the Bureau in dismissing Claimant from the service without investigation held pursuant to notice as required by Rule 20 was in violation of said Rule.

Rules 10-(c) and 20 provide as follows:

"(c) An employe absent on leave who engages in other employment will be considered out of service unless special arrangements shall have been made by agreement between the officer designated by the Management and the General Chairman."

\* \* \* \* \*

"An employe who has been in the service more than sixty (60) days or whose application has been formally approved shall not be disciplined or dismissed without investigation. He may, however, be held out of service pending such investigation. The investigation shall be held within seven (7) days of the date when charged with the offense or held from service. An employe, charged with an offense, shall be furnished with a letter stating the precise charge at the time the charge is made. A decision will be rendered within seven (7) days after completion of investigation."

This Referee does not disagree with such contention. However, since Druk did request an investigation under Rule 20 he waived his right to object to the Bureau's unilateral action in terminating his services on December 29. Therefore, it is not necessary to pass upon that contention.

The procedure followed in this case with respect to developing the facts was somewhat unusual. Not only did Druk request the investigation which was proper so long as he wished to do so, but he acquiesced and took part in an exchange of letters between General Chairman Bell and the Bureau's General Manager, D. J. O'Connell, which though it limited the time element involved in this dispute to the period of Druk's leave of absence, it had the effect of extending the time for the ascertainment of facts which became a part of the record even after the investigation had been concluded. The investigation was held on January 21, 1960, twenty-three days after Druk's

original dismissal. During the intervening period the Bureau made a more thorough investigation of Druk's wrestling activities while he was on leave, thereby bringing to light new facts which, though disputed, were properly received in evidence at the January 21 hearing, in support of the Bureau's claim that Druk did receive either money or credit, or both, as compensation for his participation in wrestling matches while he was on leave of absence in December 1959.

The evidence is conflicting. We have studied it carefully and feel that no good purpose would be served in repeating it here.

The testimony of Mr. Druk, however, should be noted. The transcript shows that he reviewed the Bureau's evidence piece by piece, and, contended that the charges against him had not been sufficiently proved. He did not testify, however, that he had not received pay for taking part in the wrestling matches.

Having carefully examined the testimony and other evidence in this case and the inferences which may be legitimately drawn therefrom, we have concluded that in view of the facts and particularly in view of the procedure followed by the parties, that the Bureau was justified in terminating Druk's services, and that its action in so doing should not be disturbed.

Our conclusions in this matter, particularly with respect to the propriety of the Bureau's action in terminating Claimant's service without investigation as provided in Rule 20 were based upon the particular facts of this case and particularly upon the procedure followed by the parties involved and should, therefore, not be considered as a precedent for either the approval or the disapproval of such action in any case except the one at bar.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 16th day of March 1962.