



Award No. 16835
Docket No. SG-17540

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern Railway Company that:

Seniority rights of L. A. Gandy be restored, effective January 27, 1967.

(Carrier's File: 013.81-86.)

EMPLOYEES' STATEMENT OF FACTS: This dispute arose because of the request of duly elected Representative of Local 185, General Chairman L. A. Gandy for preservation of his seniority under Rule 59 of the current Agreement while serving as General Chairman of Local 185 on a compensated basis; (Brotherhood's Exhibit No. 1) and Carrier's refusal to allow such request. (Brotherhood's Exhibit No. 2.)

L. A. Gandy, while serving as General Chairman of Local 185, also worked as a signalman for the Carrier for several years. This arrangement became unsatisfactory with the Employees of Local 185 because it is possible for the Carrier to exert certain pressure upon an Employee working in such dual capacity as signalman for a Carrier and duly elected Representative of that Carrier's Signal Employees, as is evidenced by General Chairman Gandy's statement set out in Brotherhood's Exhibit No. 14.

The members of Local 185 decided the members' interest could be better served if the Representative of the Employees was not actually employed by the Carrier and offered partial compensation to their General Chairman if he would represent them without working for the Carrier as a Signalman.

General Chairman Gandy accepted and wrote the Carrier for preservation of his seniority under Rule 59 of the current Agreement, which request was denied by the Carrier in letters between the General Chairman and the Carrier reproduced and identified as Brotherhood's Exhibit Nos. 3 through 18.

This dispute was handled on the property in the usual and proper manner up to and including the highest officer of the Carrier designated to handle such disputes, without obtaining a satisfactory settlement.

because you desired to relinquish your assignment as signalman in order to engage in other employment. The record further shows you are now, and have been for some time, working full time as a postal employe at Mena, Arkansas, without a leave of absence, in contravention of Rule 58 of the effective agreement and in the circumstances my decision of April 21, 1967, is hereby reaffirmed.

Yours very truly,

/s/ D. E. Farrar
Vice Pres.-Personnel"

Additional correspondence attached as Carrier's Exhibits A through D, was exchanged by the parties subsequent to letter confirming conference on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: The record shows that for several years prior to January, 1967, the Claimant herein, L. A. Gandy, while serving as General Chairman of the Organization also worked as signalman for the Carrier. On January 18, 1967, he addressed the following letter to the Carrier's Chief Engineer:

"Mr. C. G. Davis
Chief Engineer - KCS
Kansas City, Missouri

Dear Sir:

Effective at the close of work period on Friday, January 27, 1967 I am accepting a position as General Chairman of Brotherhood of Railroad Signalmen Local 185, on a compensated basis. On the same date I plan to accept a part time position with the Post Office Department at Mena, Arkansas.

I am requesting that the provisions of Rule 59 of the Current Agreement be placed in effect and that a leave of absence be granted for the duration of my tenure as General Chairman of BRS Local 185.

Please advise at your earliest convenience whether this is agreeable.

Yours truly,

/s/ L. A. Gandy
Signal Maintainer"

On January 20, 1967, the Chief Engineer replied to Claimant:

"Mr. L. A. Gandy
Signal Maintainer
Shreveport, Louisiana

Dear Sir:

Your letter of January 18th requesting a leave of absence as of January 27, 1967, to accept a part-time position with the Post Office Department at Mena, Arkansas.

Rule 58 of the governing agreement provides that an employee who engages in other employment will be considered out of service unless special arrangements are made with the Carrier. Since we have a shortage of signalmen, it will not be feasible to grant you permission to engage in other employment and your request therefor is respectfully declined.

Yours very truly,

/s/ C. G. Davis
Chief Engineer"

Rule 59 of the applicable Agreement provides:

"RULE 59.

Employees now filling, or hereafter promoted to official positions with the Railroad Company or the Brotherhood of Railroad Signalmen of America, or transferred to positions in the Signal or Telegraph Department, not covered by this agreement, and who have established seniority under this agreement, shall retain all their rights and continue to accumulate seniority in the seniority district from which promoted. They may exercise displacement rights as provided in this agreement in the event their positions are abolished or they are demoted."

Rule 58 of the Agreement provides:

"RULE 58.

Employees given leave of absence in writing by proper authority of the Railway, limited except in cases of physical disability to six (6) months in any twelve month period, will retain their seniority rights. Employees failing to return to duty on or before the expiration of a leave of absence will lose their seniority rights, unless an extension has been obtained in writing. Employees on leave of absence not due to physical disability for more than six months in any twelve month period will lose all seniority rights. An employee absent on leave who engages in other employment will be considered out of service, unless special arrangements shall have been made with the official granting the leave of absence and copy furnished General Chairman.

Employees on leave of absence who desire to return before expiration of leave will be permitted to do so on three (3) days' written notice to the proper officer."

There seems to be no dispute that subsequent to January 27, 1967, Claimant, while continuing to serve as General Chairman of the Organization, also accepted employment with the Post Office Department at Mena, Arkansas. On February 14, 1967, Claimant addressed a letter to the Chief Engineer reading:

"Mr. C. G. Davis
Chief Engineer - KCS
114 West Eleventh Street
Kansas City, Missouri 64105

Dear Sir:

Referring to my letter of January 18, 1967 and to our several conversations of near the same date relating to my acceptance of a position as paid General Chairman of Local 185 of the Brotherhood of Railroad Signalmen and my request that the provisions of Rule 59 of the current Agreement between the Kansas City Southern Railway Company and the Brotherhood of Railroad Signalmen be placed in effect as of January 27, 1967.

Notwithstanding the position as set forth in your reply of January 20, 1967 and the fact that you ignored my request in the light of Rule 59, the General Committee of Local 185 considers that Rule 59, as referred to above, to be applicable in the instant and effective as of January 27, 1967. Seniority and displacement rights, as prescribed by Rule 59, shall be retained by Mr. L. A. Gandy for the duration of his tenure as General Chairman of Local 185.

Yours truly,

/s/ L. A. Gandy
General Chairman"

On February 16, 1967, the Chief Engineer responded:

"Mr. L. A. Gandy
General Chairman
Brotherhood of Railroad Signalmen
Box 481, Route 3
Mena, Arkansas 71953

Dear Mr. Gandy:

Receipt is acknowledged of your letter of February 14, 1967, with regard to your acceptance of a position as General Chairman of the BRS and to your request for a leave of absence under Rule 59 of the current schedule.

Your request was not granted, as evidenced by my letter of January 20, 1967. I do not understand that this position of General Chairman is properly considered a full time position, because you have been actively employed as a signalman for several years and at the same time you have served as General Chairman.

In your telephone conversation with my office, you admitted that you would enter the employment of the Post Office Department at Mena, Arkansas, and that the predominance of your service would be with the Post Office Department.

Rule 58 clearly provides that an employe absent on leave who engages in other employment will be considered out of service unless special arrangements shall have been made. No such arrangements were made, and when you engaged in outside employment on January 28, 1967, you voluntarily terminated your employment relation with these Companies.

Yours very truly,

/s/ C. G. Davis
Chief Engineer"

Thereafter the Claimant handled the matter as a grievance with the Vice President-Personnel of the Carrier, claiming that his seniority rights should be restored, effective January 27, 1967, which is the claim before the Board.

The Petitioner contends that Rule 59 is controlling in the dispute and the Carrier contends that it properly applied the provisions of Rule 58.

It is well established that the Board must accept the rules as it finds them. We have no power to alter, amend or add to the terms the parties agreed upon. While under Rule 59 an employee's seniority is preserved when promoted to official positions with the Railroad Company or the Brotherhood of Railroad Signalmen of America, its terms cannot be construed to preserve the seniority of an employee who accepts employment with some other employer, in the present case the Post Office Department. Rule 58 is specific in providing that:

"An employee absent on leave who engages in other employment will be considered out of service, unless special arrangements shall have been made with the official granting the leave of absence and copy furnished General Chairman."

In our present case no "special arrangements" were made. As heretofore indicated, there is no dispute that subsequent to January 27, 1967, Claimant was employed by the Post Office Department. Based on the record and the rules we cannot find that the Carrier acted improperly in determining that Claimant voluntarily terminated his employment relationship. The claim must, therefore, be denied.

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 19th day of December 1968.

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