

Award No. 17072
Docket No. CL-17532

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerry L. Goodman, Referee

PARTIES TO DISPUTE:

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

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6391), that:

1. The Carrier violated the Clerks' Agreement when it removed the name of J. L. Stevenson from the Motive Power Department Seniority Roster, effective November 4, 1964.
2. The Carrier shall now restore the name of J. L. Stevenson to the Motive Power Department Seniority Roster with seniority rights unimpaired.
3. The Carrier shall now compensate J. L. Stevenson for all wage loss sustained on and after November 4, 1964.

OPINION OF BOARD: This is a discipline case in which Organization contends Carrier violated the Agreement because it dismissed Claimant without the investigation and hearing required by Rule 27 of said Agreement.

Carrier contends that Claimant was not entitled to the investigation and hearing required by Rule 27 because he automatically removed himself from service by teaching school while he was absent from service account of personal sickness in violation of Rule 29 (g) which provides:

"An employe absent on leave, or absent account of personal sickness or disability, who engages in outside employment without written agreement between Management and the General Chairman will be considered out of service and automatically forfeits all seniority."

The uncontroverted facts are: that Claimant worked as a second trick clerk; that he was also employed as a teacher in the local high school, where he did not teach on October 26 and 27, 1964 because of a teachers' meeting which he did not attend, but where he did teach on October 28, 29 and 30, 1964; that on October 26, 1964, Claimant reported sick and was absent from duty; that on October 27, 1964, pursuant to his physician's instructions, Claimant had an X-ray examination of his stomach and was again absent from duty account of sickness; that on October 28, 1964, Claimant conferred about

the results of the examination with his physician who advised that he had a stomach ulcer and should, therefore, not work his clerk position for a few days; that Claimant did not work his clerk position October 28, 29 and 30, 1964.

At this point the dispute begins.

Claimant states that after the conference with his physician on October 28 he went to the property, where he had a meeting with Chief Clerk Sarver in which he requested and received permission to take his remaining five days of unscheduled vacation. Claimant further states that: "Five working days later I informed the Company that I was ready to return to work on November 4, 1964."

Conversely, Carrier states that during the entire week of October 26 through October 30, 1964, Claimant was on sick leave, and that his scheduled vacation did not begin until November 2, 1964.

The preponderance of the evidence persuades us that Claimant was on sick leave October 26 and 27 and that on October 28 he received permission to and did in fact begin taking his remaining five days of vacation which meant that he was to report back to work on November 4, 1964.

Thus, Claimant's teaching school on October 28, 29 and 30, 1964, did not violate Rule 29 (g) since he did not engage in this outside employment while he was absent account of personal sickness or disability. Rather, he engaged in this outside employment while he was absent on vacation. Because of this latter fact, Claimant did not automatically remove himself from the service. Consequently, Carrier's removal of his name from the seniority list amounted to a dismissal without investigation and hearing, in violation of Rule 27.

Accordingly, Carrier shall now restore Claimant's name to the Motive Power Seniority Roster with seniority rights unimpaired and compensate him for all wages lost after November 4, 1964, less all compensation received from other employment.

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 violated.

AWARD

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of April 1969.
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