NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20371
THIRD DIVISION Docket Number CL-20527

David P. Twomey, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and
(Station Employes
PAIUTES TO DISPUTE: (
(Norfolk and Western Railway Company

STATEMENT. OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7485) that:

1. The Carrier violated the then current Clerks' Agreement, particularly Rules 1, 3, 5, 27, 28 and 65 when effective March 9, 1973, it removed the name of Chief Caller H. L. Graham from the Pocahontas Division, Clerical Seniority Roster, without affording Mr. Graham an investigation under Rule 27.

2. As a consequence Carrier shall:

(a) Clear the service record of Chief Caller H. L. Graham of any reference to his dismissal.

(b) Promptly restore Chief Caller H.L. Graham to duty with seniority, vacation and other rights unimpaired.

(c) Pay Chief Caller H. L. Graham the amount of wages he would have earned absent the violative act, less outside earnings.

(d) Pay Chief Caller H.L. Graham any amount he incurred for medical or surgical expenses for himself or dependents to the extent that such payments would have been paid by Travelers Insurance Company under Group Policy No. GA-23000 and, in the event of the death of Chief Caller H.L. Graham pay his estate the amount of life insurance provided for under said policy. In addition, reimburse him for premium payments he may have made in the purchase of substitute health, welfare and life insurance.

(e) Pay Chief Caller H.L. Graham interest at the statutory rate for the State of West Virginia for any amounts due under (c) above.

OPINION OF BOARD: Claimant H. L. Graham was granted leave of absence from his regular assignment of Chief Caller at Bluefield, West Virginia for the purpose of pursuing union business under Rule 17(a). Claimant was marked off under Rule 17(a) and was absent from his regular assignment on 128 of the 134 assigned work days from August 1, 1972 through February 8, 1973, vacation period of December 6 through 24, 1972 being excluded. There was no showing that he was not on legislative or union business during the days he was marked off under Rule 17(a). However, Carrier showed beyond any doubt that the Claimant was employed as a full-time member of the faculty (12 classroom hours per week, plus advising and committee work) of Concord College at Athens, West Virginia from August 21, 1972 through the date of March 9, 1973 when the Carrier's Superintendent notified Claimant in writing that since he had engaged in outside employment without proper agreewent, as required under Rule 17(g), while on leave of absence, he had automatically forfeited all seniority held under the applicable Clerks' Agreement and that his employment with the Carrier was terminated immediately.

Rule 17(g) states:

> "An employee 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 language of this special rule is clear and unequivocal. If an employe on leave engages in outside employment without written agreement between Management and the General Chairman, that employe will be considered out of service and automatically forfeits all seniority. The record is clear that Claimant did engage in full-time outside employment; and there is no evidence anywhere in the record, either during the handling on the property or in the Petitioner's submission or rebuttal, to indicate that a written agreement existed to allow Claimant to engage in outside employment while on leave of absence.

The Employes contend that the Carrier was required to give Claimant an investigation under Rule 27, the discipline-investigation rule, before removing him from the seniority roster and terminating him from service. It is well settled by thia Board that failure to comply with leave of absence rules neither constitutes discipline nor entitles employees to a hearing under the discipline rule.

The Employes cite Third Division Award 17072 as an award supporting their contentions. Clearly this award does not. It simply states that since the Claimant of Award 17072 engaged in outside employment while he was absent on vacation, as opposed to outside employment while on leave of absence for sick leave, the Claimant had not automatically removed himself from service in violation of the leave of absence rule.

Further, the Board feels it is unfortunate indeed for a person with thirty one years of service to lose his seniority. However, the parties' collective bargaining agreement contains a rule specifically covering the matter of this case; and the Board is bound to follow the clear language of this agreement. The Board is without discretion to weigh equitable arguments in the face of the clear rule of the parties.

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 Employes involved in this dispute are resnectively Carrier and Employes 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of August 1974.