

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20426
Docket Number CL-20568

Irwin M. Lieberman, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and
(Station Employees

PARTIES TO DISPUTE: (

(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7451)
that:

(1) The Carrier violated the terms of the Agreement between the parties when it arbitrarily held Mr. Wayne R. Razmus and Stanley D. Razmus out of service for a period exceeding two (2) weeks, thereafter claiming they were absent without proper leave and thereby forfeited their seniority rights, and

(2) The Carrier further violated the agreement when it refused to grant a fair and impartial hearing as requested by the Local Chairman, and

(3) That Claimants Wayne R. Razmus and Stanley D. Razmus shall now be restored to service with full seniority and all other rights unimpaired and compensated for all loss of wages or wage equivalents sustained by reason of Carrier's wrongful action.

OPINION OF BOARD: Claimants were extra operators based at Grand Rapids, Michigan, with seniority dates of October 25, 1969 and February 27, 1970. Both men, brothers, on December 13, 1971 were instructed to protect vacancies at two different locations in Detroit on December 15, 1971. Neither employee reported for the assignment on December 15th and neither reported as of December 31, 1971. On December 31, 1971 individual letters were sent to the two Claimants advising each of them that they had been absent from duty in excess of two weeks without leave of absence as required by Article 15 (a) of the Agreement and that they had forfeited their seniority and were closed out of service.

Petitioner's position during the handling of this dispute on the property embraced the following principle points: 1. Claimants did not have the funds to go to Detroit and were denied a salary advance; Carrier knew they could not protect the assignments; 2. Carrier held Claimants out of service for a period exceeding two weeks and 3. Claimants were denied a hearing as provided by Rule 19 of the Agreement. In addition, in its submission, Petitioner argues that Claimants were not given preference to several positions available to them, based on their seniority, at Grand Rapids. With respect to the last contention, it must be disregarded since the record indicates that such argument and/or documentation was never raised during the handling of this dispute on the property.

Carrier asserts that the Claimants had both been earning money during the three months prior to the period in question and were not advanced funds accordingly. In addition Carrier states that one of the Claimants advised the Chief Dispatcher, upon being told of his Detroit assignment, that he had plans for the holiday period and could not change them, but would be available after the first of the year. The other Claimant advised the Chief Dispatcher that since his brother was not going to Detroit, he didn't see how he could go. Carrier claims that it was in dire need of operators during the holiday period in particular. Carrier states that Claimants voluntarily refused to perform service during the period beginning December 15th, and obviously were not held out of service.

With respect to the applicability of a disciplinary hearing, the two rules at issue provide in pertinent part as follows:

"RULE 15 - LEAVE OF ABSENCE

* * * * *

(a) An employee who desires to absent himself from duty for a period of more than two (2) weeks shall make a written request to his immediate supervising officer for leave of absence. Employees who fail to have such absences from duty covered by written leave of absence shall forfeit their seniority rights and be closed out of service; provided, however, that in case of sickness or injury, the time limit specified in the first sentence of this paragraph (a) during which such leaves of absence must be requested will be extended."

"RULE 19 - DISCIPLINE

(a) An employee will not be disciplined or dismissed except in case of disapproved application as set forth in Rule 30, without first being given a fair and impartial hearing. Suspension pending a hearing will not be considered a violation of this principle.

* * * * *

(j) This rule will not be considered as having any application to employees closed out of service in accordance with Rules 15 and 17."

In its arguments the Organization claimed that the two men could not have been absent without leave of absence since they did not accept the assignment; they should have been charged with insubordination and a hearing held. Carrier retorts that the men failed to report to a proper assignment, never requested a leave, and hence Rule 15 (a) is applicable: they forfeited their seniority.

Petitioner argues "That Rule 15 (a) is applicable only where the employe withholds himself from service". We agree and since the record offers no other explanation for Claimants' actions, we find that they knowingly withheld themselves from service. The record reveals that the Local Chairman was informed after requesting relief by two Carrier Officials, prior to December 15th that the two men must protect their assignments. It follows then, that if Rule 15 (a) is controlling, the Claimants were not entitled to a hearing under the clear terms of Rule 19 (j). There is absolutely no evidence in the record to support the contention that Claimants were held out of service by Carrier. As we have said in previous Awards, Claimants' actions in this case resulted in severance on an automatic basis and cannot be regarded as having disciplinary implications requiring an investigation. (see Awards 13467, 19905, 19806, and 20086).

In view of the entire record of this dispute and the foregoing, we shall deny the claim.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1974.