

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award **Number** 21128  
Docket Number CL-21275

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight **Handlers**, Express and Station **Employees**  
PARTIES TO DISPUTE: (  
(Pittsburgh and Lake Erie Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-7868) that:

(a) The Carrier violated the **Rules** Agreement, effective September 10, 1946, particularly **Rule** 20, when it assessed discipline of dismissal **on** Claimant, Barbara Kline, a Clerk on **leave** of absence **from** the Carrier's Accounting **Department** at Pittsburgh, Pennsylvania.

(b) Claimant Barbara **Kline's** record **be cleared** of the charger brought against her on **August** 20, 1973.

(c) Claimant Barbara Kline be **restored** to service with seniority and all other rights unimpaired.

OPINION OF BOARD: Claimant was found guilty **of** violating **Rule** 23 because she allegedly engaged in **business while on** leave of absence:

**"RULE 23 - LEAVE OF ABSENCE**

An **employee** may **have** thirty (30) **days'** layoff upon receipt of **permission** from proper **officials** without written leave of absence. If for over thirty (30) days or under ninety (90) days, he **shall** have **written** leave of absence. The limit of leave of absence to be one **year**, after which, if an **employee** returns **to** the service, he **shall be** employed as a **new man** except **in cases** of **sickness**, disability, or while engaged **on committee work** or special duty for the company.

**NOTE:** It is understood that the application of **Rule** 23 **will** not permit the granting of a leave of absence to engage **in** business or to accept employment in **outside** service."

The record **shows** that Claimant had received a leave of absence due to a physical disability, which was subsequently extended. The last extension granted was due to **expire** in October, 1973, but the Carrier's actions, **discussed** herein, terminated it on **August** 20, 1973.

The Organization maintains that the "Note" to **Rule** 23 does not apply to the instant case, because the alleged activities in question occurred after the leave of absence was properly obtained and extended, whereas the pertinent language prohibits the "... granting of a leave of absence to engage in business...." (underscoring supplied).

Although it is undisputed that Claimant was the President-Treasurer of the Global Lounge, Inc., during the time **in** question, and that she was observed serving patrons, the **Employees** deny that this activity violated Rule 23 as it neither constituted employment or involved the physical stress of her clerical position.

Carrier contends that **Claimant clearly** "engaged **in** business outside of **service**" while on leave of absence, **as shown by her ownership of the business and the observation of her serving in the bar.** It **states, further,** that **Claimant's** failure to report for a **service examination confirms her** intention to violate Rule 23. ' Carrier states, in **its submission,** that if Claimant had complied with the instruction to report to **Chief Surgeon Happel's** office to **determine** whether or not she was capable of **performing** clerical services and had been found incapable **of** working, her leave of absence would not have been **terminated.**

At first blush, there is a tendency to presume that the Note to **Rule** 23 serves as a contractual deterrent to activities of a business nature while an **employee** is on a leave of absence. **But, the rule** is not so worded. It refers to 8 "granting" of leave. The **admonition** contained in Award 12558 is particularly pertinent **here:**

"We may not inject **our predilections** as to **what** is fair, just **and** equitable. Nor can we **engage in** speculation as to **what** might have been in the **minds** of the parties, but not evidenced in the **Agreement** as executed, or **otherwise proven.**"

We do not mean to suggest that **the** Carrier is without recourse if it charged, and **proved,** a fraud in the obtaining of a leave or an extension thereof; but such is not the allegation here. Moreover, the Carrier is not precluded **from** a consideration of its knowledge of outside activities **concerning** a request for an extension. Under those types of circumstances, questions of whether ownership of a **business** is embraced within **the term** "engage in **business**" - questions of proof, etc. - **may** be quite material to a resolution. But **we** do not find that those issues are material here. In short, we feel that, under the precise wording of the **rule,** the Carrier's attempt to **terminate** the leave **in** August, 1973 was **premature.**

Reliance upon an Award of Public Law Board No. 1376 is misplaced. That dispute concerned significantly different factual circumstances.

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.

A W A R D

claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 16th day of July 1976.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award **Number** 21128  
Docket Number CL-21275

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station **Employees**  
PARTIES TO DISPUTE: (  
(Pittsburgh and Lake Erie Railroad Company

ON REMAND FROM THE  
UNITED STATES DISTRICT COURT -  
WESTERN DISTRICT OF PENNSYLVANIA  
CIVIL ACTION NO. 77-348

INTERPRETATION TO AWARD 21128. DOCKET CL-21275

We are called **upon** to render an interpretation of Award 21128 of this **Division**, particularly as to whether or not there is an entitlement to receive back wages under that Award.

Initially, we are inclined to remind the parties that the purpose of an Interpretation is to clarify an Award; but it is not a **means** to provide an avenue to reargue **the original** claim.

In the Court's Memorandum Opinion which accompanied the Order of Remand, we find:

"The plaintiff on the other hand, claim that an intention to award back wages can **convincingly** be inferred from the **NRAB's** opinion."

In that regard the Court noted Rule 20(e):

"If the **employee** is found not guilty of the offense with which charged, he shall be reinstated, compensated for his net **wage** loss, if any, and his record, cleared."

Reference to the cited Rule was made in the Employee's  
original Submission. Carrier did not challenge or rebut-that **inclusion** as being "new argument" or not a matter which had been raised **when the matter was under review on the property** prior to the original submission. Significantly, the Board considered - and rejected - the Rule 20(e) argument in view of the **circumstances** presented in this dispute.

Our "Claim Sustained" Award was merely responsive to the Statement of **Claim**, and the issuance of a "Blank Order" is a Division practice which does not require a "payment of money."

Award Number 21128  
Docket Number CL-21275

Page 2

The **employee** is not entitled to back wages under Award 21128.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: *A. W. Pauls*  
Executive Secretary

Dated at Chicago, Illinois, this 18th day of **November** 1977.