

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24867
Docket Number CL-24459

Edward M. Hogan, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employes
(
(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9579)
that:

(1) Carrier violated the Agreement between the parties when it dismissed Mr. M. E. Slovinski from its service following investigation, without giving reasonable consideration to all the facts and circumstances involved. (Carrier's File - C).

(2) Carrier's action was unjust and unreasonable due to the circumstances involved.

(3) Carrier shall now be required to compensate Mr. M. E. Slovinski for all wage losses sustained, beginning Tuesday, January 27, 1981, and continuing each work day, five days per week until returned to service; and shall also be required to expunge the investigation transcript from his personal file.

OPINION OF BOARD: Claimant was dismissed from the service of the Carrier on January 27, 1981, following a formal investigation held on January 20, 1981. Claimant had received three letters under the date of January 12, 1981, stating that an investigation would be held on January 20, 1981:

"... to develop the facts, discover the cause and determine your responsibility, if any, in connection with your alleged failure to properly protect your assignment by marking off account alleged illness and performing service for compensation in the Collinsville, Illinois School System, with knowledge that you would receive sick benefits from the T.R.R.A. on Jan. 6, 7, 8, 1981; and to determine if any General Notices, General Rules, Accident and Personal Injuries, and General Regulations, issued January 10, 1980, were violated in connection therewith."

With the exception with time served in the U.S. Army, Claimant had served the Carrier since June of 1952. After his return from the Armed Services, Claimant furthered his education and received his Bachelor of Science degree in education from Southern Illinois University in January of 1965. Claimant did so while as a full-time employe of the Carrier. During the

summer of 1965, Claimant again attended Southern Illinois University as full-time summer student while working for the Carrier on a full-time basis. In the fall of 1965, the Claimant became a full-time school teacher in the Collinsville, Illinois School System, and again, continued to work full-time for the Carrier. For the next four years, Claimant continued to work both for the Carrier and the school system on a full-time basis. In fact, it was asserted that fellow employes and officers of the Carrier frequently referred to the Claimant as "Professor" and/or "Doc". In June of 1969, the Claimant received his Masters Degree in education from Southern Illinois University. Subsequently, and not in conflict with and evidently not interfering with Claimant's full-time employment relationship with the Carrier, Claimant began work on his doctorate. In the Fall of 1972, Claimant became the principal of two schools in the Collinsville area. Claimant finally received his doctorate in education in June of 1975. During this entire period, Claimant worked both jobs without any complaints from either the Carrier or the Collinsville school system, as the Claimant had always worked hours for the Carrier which were not in conflict with the hours worked for the school system.

At the time which gives rise to this dispute, the Claimant's position with the Carrier required him to drive a company vehicle for the better part of his assigned work day, transporting crews of the Carrier and crews of other Carriers, performing messenger work, and transporting Carrier mail and Carrier materials from location to location. On January 4, 1981, while driving a Carrier vehicle and performing his assigned duties, the vehicle in which the Claimant was driving was struck by an automobile which had run a red light. The Claimant immediately notified the Carrier's office, and subsequently returned to the Carrier's facility accompanied by a representative of the Carrier. The Claimant was then taken to the emergency room of the local hospital by the Carrier's Trainmaster. Claimant was examined and X-rayed, was found to have suffered injuries, and was given a cervical collar and medication. The attending physician also warned the Claimant not to operate a motor vehicle while taking the medication prescribed. Subsequent to his emergency room treatment, the Claimant returned to the Carrier's facility and completed the Carrier's injury reports at which time the Trainmaster instructed the Claimant to mark off until he felt better and was able to work. On January 6-10, 1981, there is no dispute that the Claimant marked off and received sick pay for January 6-8, 1981. During this period, the Claimant continued to work for the Collinsville school system, although his work did not require him to drive a motor vehicle, such activity having been proscribed by his physician because of the medication he was receiving.

The Organization contends that there have been numerous Rule violations with respect to the handling of the instant dispute; to-wit, Rule 23, 24, 25, 26, 27, 28, 29 and 30. Furthermore the Organization contends that the Carrier's action was arbitrary, unjust and unreasonable because of the Carrier's interpretation of Rule 51 of the controlling Agreement pertaining to Sick Leave. Lastly, the Organization contends that the action taken in the instant case was not just, nor was it reasonably consistent with the facts and circumstances presented.

The Carrier contends that the Claimant marked off as sick on the days in question, receiving compensation and other benefits under the sick leave provisions of the Agreement, while performing compensated service

on the same dates for another employer. The Carrier questions how the Claimant could be sick for his work for the Carrier while being able to work for another employer. With respect to the later question, the Carrier specifically cites Rule 51(g) (Sick Leave) which states:

"An employee falsely claiming sick pay or funeral time will be subject to disciplinary action."

The Carrier argues that the Claimant knowingly and willingly claimed sick pay under false pretenses, and as a long-term employee (twenty-eight years), he was well aware of the practice of the Carrier.

However, we also agree with the position of the Carrier that even if the Claimant was unable to perform his regularly assigned duties, he should have notified Carrier of the restrictions placed on his driving ability and it might very well have been possible for arrangements to be made permitting Claimant to perform the keypunch and office work assigned to his position.

Therefore, this Board sustains the claim of the Organization; however, we do so with no backpay awarded due to the circumstances we have enumerated above with respect to the position of the Carrier. While we find the Claimant to be a model and exemplary employee for his long service with the Carrier, we believe that he should have made it clear to the Carrier that he was only restricted from driving rather than marking off as sick while continuing to work full-time for another employer and receiving sick benefits from the Carrier. To do otherwise would be unfair to the Carrier as the Carrier has a right to expect that employees in its service be actually "sick" in order to receive sick benefits.

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

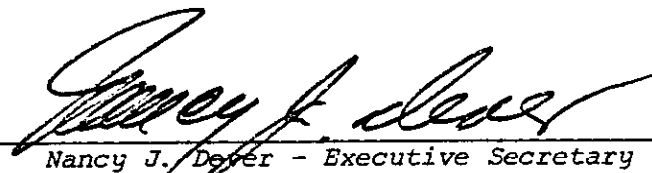
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1984