

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30806  
Docket No. SG-31188  
95-3-93-3-29

The Third Division consisted of the regular members and in addition Referee M. David Vaughn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(Illinois Central Railroad

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Illinois Central Railroad.

Claim on behalf of S. W. Denton:

- A. Carrier violated the current Signalmen's Agreement, particularly Rule 35 (a), when it failed to provide the Claimant with a fair and impartial investigation, and then on April 6, 1992, imposed the arbitrary and capricious discipline of dismissal from service.
- B. Carrier violated the current Signalmen's Agreement, particularly Rule 24 (c), when it failed to grant the Claimant a leave of absence in accordance with his request of February 20, 1992, in accordance with his acceptance of a full time position with the Federal Railroad Administration.
- C. Carrier should now be required to grant the Claimant the requested leave of absence and remove the record of discipline from the Claimant's record." Carrier's File No. 135-113-1 Spl. - Case #63 Sig. and 135-296-1 Spl. - Case #64 Sig. BRS File Case No. 8856-IC.

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was employed by the Carrier as a Signal Maintainer. Claimant accepted full-time employment as an Inspector with the Federal Railroad Administration, effective March 9, 1992. On February 20, 1992, he advised the Carrier of his appointment and requested an indefinite leave of absence, effective as of the date of the appointment. Claimant cited in support of his request Rule 24 (c) of the applicable Agreement, which provides:

"Employees on full time official positions in the Brotherhood of Railroad Signalmen, positions on Commissions or Bureaus, or public office positions will be given a leave of absence for the duration the employees are on these positions."

Rule 24 (c) is an exception to Rule 24 (g), which provides:

"Except those employees covered by paragraph (c) of this rule, employees while on a leave of absence who engage in outside employment will forfeit their seniority and will be considered as having resigned from the service of the Company."

By letter dated February 24, 1992, the Carrier denied Claimant's request, without explanation.

Claimant took scheduled vacation in February and March. He did not return to service following that vacation, but, instead, assumed his FRA position and ceased to work for the Carrier.

The Carrier subsequently posted his position, explaining the reason for the opening as "Resignation."

The Carrier summoned Claimant to an Investigation held March 30, 1992 to develop facts and determine responsibility in connection with his absence from duty. At the Hearing the above facts were adduced.

The Carrier determined Claimant to have been absent without proper authority between March 9 and March 30 and dismissed him from service. The Organization protested the Carrier's dismissal action and its refusal to grant Claimant a leave of absence. The claims were progressed in the usual manner, but without resolution. They were then consolidated and brought to this Board.

The FRA was created in 1967 by Public Law No. 89-670. It was given certain enforcement authority with respect to railroad industry safety which had previously been assigned to the Interstate Commerce Commission.

Rule 24 (c) first appeared in the Agreement in 1976. However, the same operative language, limited to retention and accumulation of seniority (as opposed to leaves of absence) had previously appeared in Rule 411 and had been in the Agreement since 1958. However, Rule 411 contained other provisions, including a statement that "[f]ailure to work on an assignment for 90 work days" will result in forfeiture of seniority and be treated as a resignation.

The Carrier argues that it properly denied Claimant a leave of absence because its obligation to grant such absences and continue an employee's seniority is derived solely from the Agreement, and the Agreement does not cover Claimant's employment with the FRA, which is not "service on" a "commission or bureau." By omission, regular employment with an administration is not covered by the Rule. It contends that Claimant simply took a job with another employer - a circumstance not entitling him to a leave of absence. Indeed, it points out that FRA's own rules requiring resignation from the railroad after one year of service preclude application of the indefinite leave of absence sought by Claimant.

The Carrier points out that Claimant voluntarily failed to return to service when not protected by a leave of absence; and it asserts that it acted properly in considering him to have resigned and to have forfeited his seniority.

Notwithstanding the Carrier's position that Claimant resigned, it also argues that he was properly dismissed for absence from service without proper authority. It contends that the charge was proper, and properly amended, since the Organization agreed to it and because Claimant was charged with absence for a period ending within 10 days of the Investigation. With respect to the merits of the claim, the Carrier points out that the Organization's defense is simply that Claimant should have been granted a leave of absence. Since the Carrier asserts that such a leave was not required and was not granted, it contends that his absence from service without proper authority is clearly established. It further contends that dismissal is the proper remedy, since any lesser penalty - e.g., suspension - would neither resolve Claimant's absence nor eliminate the necessity for further action at the end of the suspension.

The Carrier urges that the claim be denied.

The Organization argues that the Carrier failed to afford Claimant due process by failing to charge him within 10 days of when it knew he was absent and by failing to provide him with a

copy of the transcript. With respect to the merits of the claim, the Organization argues that Claimant was entitled to a leave of absence to accept his FRA appointment, since FRA is an administrative agency of the government, meeting the definition of a "commission" or a "bureau." It asserts that, since Claimant's employment is covered by Rule 24 (c) and he timely requested a leave of absence, the Carrier was obligated to grant him the leave.

The Organization urges that the indefinite leave be granted and that Claimant's position be re-bulletined to reflect his status.

Seniority and retention of seniority during periods of absence are created by, and limited to the provisions of the applicable Agreement. See, e.g., Third Division Award 16545. Absent a contractual requirement, the Carrier was not obligated to grant Claimant a leave of absence to enable him to retain his seniority while employed by the FRA.

Rule 24 (c) requires the Carrier to grant leaves of absence under certain circumstances, one of which is for "positions on Commissions or Bureaus." The implication of the listing of the various circumstances under which leaves of absence will be granted implies that, in other circumstances, there is no obligation to do so. See, e.g., Award 26, Public Law Board No. 2409.

The Board has considered the Organization's argument that Claimant's FRA job constitutes a position on a commission or bureau. We are not persuaded. The FRA - an "administration" - was created before the leave of absence provision in Rule 24 (c) was enacted; and, although the phrase "Commissions or Bureaus" appears to have been borrowed from Rule 411, it created a new entitlement. The failure of the parties to list "administrations" as entities covered implies the absence of intent to cover them.

Moreover, the language of Rule 24 (c) covers "positions on" commissions or bureaus (emphasis added), rather than "employment by." Commissions are headed by commissioners (e.g., Commissioners of the Interstate Commerce Commission) a place or position "on" a commission is a position as a commissioner. Conversely, a "position on" is not the same as "employment by" such an organization. Claimant was employed by the FRA. This Board is not persuaded that he was entitled under Rule 24 (c) of the Agreement to a leave of absence from the Carrier to engage in his employment.

Because of our conclusion in this regard, we note, but do not rely on, the one year limitation on leaves of absence imposed by FRA on its employees. That limitation would apparently moot the Claimant's entitlement to a leave beyond March 1993, a period now past.

A fair reading of Claimant's notification letter is that he was resigning, effective March 9, to take the FRA position. Indeed, his supervisor testified he so understood his intent and the bulletining of his position stated the Carrier's understanding as to his status. The Board concludes that Claimant resigned, effective March 9, 1992. The propriety of the Carrier's determination not to grant Claimant a leave of absence in no way changes the status of that resignation.

In light of Claimant's resignation from employment on March 9, 1993, the Carrier's assessment of the penalty of dismissal for unauthorized absences occurring after that date is unnecessary and void.

Claimant's request for a leave of absence is denied. Claimant is deemed to have resigned from his employment with the Carrier, effective March 9, 1992. In light of Claimant's resignation, the Carrier's dismissal of Claimant for absence without authorization subsequent to its effective date is voided as of no effect. Claimant's records shall be amended to expunge reference to his dismissal and to reflect his resignation.

#### AWARD

Claim sustained in accordance with the Findings.

#### ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

National Railroad Adjustment Board  
By Order of Third Division

Dated at Chicago, Illinois, this 6th day of April 1995.