

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE WHEELING & LAKE ERIE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

- (1) That the seniority rights of H. C. Dodd as carpenter on The Wheeling and Lake Erie Railway shall be restored and that he shall be recognized as having seniority as a B. & B. carpenter as of November 29, 1929;
- (2) That the name of H. C. Dodd shall be restored on the seniority roster of Bridge and Building Carpenters on The Wheeling and Lake Erie Railway with seniority rights as such as of November 29, 1929.

EMPLOYES' STATEMENT OF FACTS: The claimant, H. C. Dodd, entered the service of The Wheeling & Lake Erie Railway as a carpenter on October 1, 1929 (excerpt of seniority roster issued January 1, 1938, Employees' Exhibit "A"). He was elected General Chairman of the Brotherhood of Maintenance of Way Employes in August, 1934 and served in that capacity until resigning therefrom on March 7, 1938, returned to the service of the Carrier as a carpenter on May 2, 1938, and continued in that service until June 1, 1938 when he accepted a position with the Railroad Retirement Board, in which position he served until September 1, 1939. From September 1, 1939 until February 16, 1940 he served as Grand Lodge representative of the Brotherhood of Maintenance of Way Employes. On February 16, 1940 H. C. Dodd resumed the duties of General Chairman of the Brotherhood of Maintenance of Way Employes, Wheeling & Lake Erie Railway.

During all of the time since August, 1934 up until the present time, he has been duly elected Local Chairman of Lodge No. 1679 of the Brotherhood of Maintenance of Way Employes, having jurisdiction over members employed on The Wheeling & Lake Erie Railway, and has served the members of this Lodge as their Local Chairman. In evidence thereof, there is a statement by John H. Schwab, Secretary-Treasurer, Lodge No. 1679, Employees' Exhibit "B."

The Agreement in effect between the Carrier and the Brotherhood is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Rules J-1 and J-2 of Agreement in effect between The Wheeling & Lake Erie Railway and the Brotherhood of Maintenance of Way Employes, governing leave of absence, revised March 1, 1937, appearing on pages 19 and 20 of the printed Agreement, read:

The Board's attention is directed to the following facts pertaining to the progression of the claim on the property:—

(1) Mr. Douglas, Acting General Chairman, did not protest the termination of Mr. Dodd's seniority, neither did he appeal when the Carrier's Engineer of Maintenance of Way and Structures rejected the employees' request for modification of the Leave of Absence Rule. Such an appeal could have been made to the Vice President and General Manager, the highest official designated by the Management to handle labor disputes.

(2) Formal protest of the removal of Mr. Dodd's name from the seniority roster was first presented to the Carrier's Engineer Maintenance of Way and Structures on July 5, 1939, by Mr. J. Wilyat, Assistant General Chairman, who was advised that the protest could not be entertained and that the case was closed. No higher appeal was made on the part of Assistant General Chairman Wilyat during the year 1939.

(3) The next formal protest of the removal of Mr. Dodd's name from the seniority roster was made by Assistant General Chairman Wilyat on July 12, 1940, (12 months after the Carrier's decision addressed to Mr. Wilyat on July 7, 1939). This request was denied and Mr. Wilyat advised that the case was closed.

(4) On September 12, 1940, Mr. Dodd, General Chairman, requested a conference to discuss his seniority, basing his contention on the fact "that certain requests were made by this organization to change our present Leave of Absence Rule for the purpose of protecting just such cases as mine". Under date of September 16, 1940, Mr. Dodd was advised by the Carrier's Engineer Maintenance of Way and Structures that the Carrier was not agreeable to the changes as suggested and that his record had been closed in accordance with existing rules. No higher appeal was made on the part of General Chairman H. C. Dodd during the year 1940.

(5) On March 19, 1941, (6 months after the Carrier's decision, addressed to Mr. Dodd on September 16, 1940), Mr. Dodd again requested a meeting to discuss his seniority. Mr. Dodd was advised by the Carrier's Engineer Maintenance of Way and Structures that his case was closed.

On April 4, 1941, Mr. Dodd addressed Mr. Durham, Executive Vice President and General Manager, requesting a meeting to discuss his seniority and a revision of the present leave of absence rule.

On May 10, 1941, Mr. Durham advised Mr. Dodd that his request for restoration of seniority rights and change in the Leave of Absence Rule was denied.

(6) On January 30, 1945 (43 months after Mr. Durham's denial of May 10, 1941) Mr. Dodd again submitted a request that Mr. Durham review his decision of May 10, 1941, and that if said decision was final, he had "no alternative but to invoke the services of the Third Division, National Railroad Adjustment Board."

In conclusion the Carrier contends that Mr. Dodd severed his employment relation with the Carrier when he engaged in outside gainful employment for a period of more than fifteen days and arbitrarily failed to return prior to the expiration of his leave.

OPINION OF BOARD: This dispute must be resolved under the Leave of Absence Rules of the agreement which are as follows, so far as here material:

"Leave of Absence

"(a) Employees will be granted leave of absence in case of sickness or physical disability. When requirements of service will permit, employees, on written request to proper authority of the Railway, will be granted leave of absence for six (6) months or less and will retain their seniority during their leave. A copy of such letter granting the leave of absence will be furnished the General Chairman of the Employees Organization.

"Employees on leave of absence, who engage in gainful employment with other Companies, or individuals, for a period of more than fifteen (15) working days, will forfeit their seniority.

"Failing to Return.

"(b) X x x x x x x x

"Holding Brotherhood Offices.

"(c) Employees holding elective offices in the Brotherhood of Maintenance of Way either on the Wheeling and Lake Erie Railway System, or Grand Lodge, will be given leave of absence during the term of office and will be given leave of absence during the term of office and will have the privilege of returning to their former positions or exercise their seniority within thirty days after the expiration of their term of office."

Claimant relies upon the above quoted subdivision (c) of the rule, and contends that at all times in question he was holding elective office in the Brotherhood of Maintenance of Way Employees either on the Wheeling and Lake Erie system or Grand Lodge.

It is undisputed that from June 1, 1938 to September 1, 1939, claimant was employed by the Railroad Retirement Board, and was working full time on this position. In advising the carrier who were the "credentialed" representatives of the Maintenance of Way department for the years 1939 and 1940, the General Chairman made no mention of the claimant, so it appears, without much question, that if during the time claimant was working for the Railroad Retirement Board he was also an officer of the local lodge as certified by Jacob M. Schwab, he was a nominal officer only and was devoting his entire time to his position with the Railroad Retirement Board. The Railroad Retirement Board is an independent agency of the Government, and claimant in his position was a regular Government employe and paid as such.

The above quoted rules relating to leave of absence, do not contemplate, in our opinion, that an employe while on leave may accept full time employment for a period of more than a year, as did claimant, and at the same time retain his seniority. The second paragraph of the above quoted subdivision (a) provides a fifteen day limitation upon outside employment while upon leave of absence. Subdivision (c) makes it clear that performing official duties for the Brotherhood, either locally or in the Grand Lodge, will not be considered outside employment and that leave will be granted for the performance of such official duties, but to hold as claimant contends here that simply because he was a nominal officer of the local lodge, he was entitled to leave of absence during which time he could accept outside full time employment over a 17 months period, we believe would be contrary to both the purpose and spirit of the leave of absence rules.

That the above is the proper interpretation of the rules we believe is evidenced quite clearly by a letter written by claimant himself, who for almost four years prior thereto had been the General Chairman. In this letter claimant recognizes that he was entitled to leave under the Rules when he states, "It is my understanding that Mr. L. M. Dounglas, Acting General Chairman, will contact your office regarding a change in the rule, or a letter of exceptions in this particular case, at which time I will request an indefinite leave." The rules were never changed and no exception was made, Mr. Dodd

simply left his employment with the Carrier and went to work for the Government Agency.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 by accepting full time employment for a period of 17 months with the Railroad Retirement Board Mr. Dodd forfeited his seniority.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 14th day of July, 1947.