Award No. 12104
Docket No. MS-14237

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

JESSE LIGHTFOOT

THE NEW YORK CENTRAL RAILROAD

STATEMENT OF CLAIM: Claim of Jesse Lightfoot against the New York Central Railroad Company that he be restored to service with seniority and vacation rights unimpaired and compensated for net wage loss account of Carrier dismissing claimant from service on April 30, 1962, and failure to allow claimant to exercise seniority in classification under agreement between the New York Central Railroad Company and Hotel and Restaurant Employees International Union, Local 233, said dismissal being in violation of the agreement between Carrier and Hotel and Restaurant Employees' International Union, Local 233.

OPINION OF BOARD: Prior to May 5, 1962 Claimant held seniority rights as Sleeping Lounge Car Attendant under an agreement between Carrier and Brotherhood of Sleeping Car Porters, herein called Porters. And, at the same time Claimant held seniority rights as Waiter, Waiter-in-Charge, Coach Porter and Bartender under an agreement between Carrier and Hotel and Restaurant Employees' and Bartenders' International Union, Local 233, herein called Local 233.

On March 13 and 14, 1962, Claimant was working a position within the scope of the Porters' agreement. [NOTE: All dates herein are in the year 1962 unless otherwise indicated.] Carrier charged him with specified derelictions of duties on those dates. A hearing was held and Claimant was dismissed from Carrier's service on May 5. In our Award No. 11769, in which the facts relating to the discharge are set forth, we found "from the record that he [Claimant herein] had a fair hearing in which charges were sustained"; and, we denied the claim for reinstatement, pay for time lost, and restoration of seniority rights and vacation rights. Award No. 11769 is res adjudicata of the issues resolved therein.

On May 5, the date his discharge became effective, Claimant wrote a letter to Carrier's Manager Dining and Sleeping Car Service, in which he pleaded on the basis of his long years of service, his past record and his age that he be given some job in Carrier's Dining Car Service. He did not ask for pay for time lost. This we find was a personal appeal for leniency.

On June 13, an International Vice President of Local 233 telephoned Carrier concerning Claimant's dismissal. He stated that he believed Claimant's

seniority under Carrier's agreement with Local 233 was not affected by Claimant's dismissal and inquired as to Carrier's views in this respect. The position of Carrier was made known during the course of the telephone conversation and at the request of the International Vice President, confirmed in a letter addressed to him under date of June 14, which reads, in part, as follows:

> "This refers to telephone conversation June 13 concerning Mr. Jesse Lightfoot.
>
> It is the Carrier's position that Mr. Lightfoot has had the full, fair and impartial hearing to which he is entitled, that his dismissal completely severs his employment relationship with the New York Central Railroad, and terminates his seniority both under the agreement with the Brotherhood of Sleeping Car Porters and that with your Organization."

In a letter dated June 18, the International Vice President acknowledged receipt of the aforementioned letter and after stating that Local 233 "cannot agree with your conclusion" it goes on to say:

> "Please be advised that our prime interest in this instance is to seek leniency for a former employe who spent over 30 years in the service of your Carrier."

On June 22, Carrier denied Local 233's request for leniency. Thereafter, Local 233 took no further action in the matter.

Claimant, as an individual, wrote a letter to Carrier under date of July 2 which reads:

> "Subsequent to April 30, 1962, I reported at your office for purposes of exercising seniority as a waiter under the Agreement between Dining Car Employees Union Local 233 and the New York Central Railroad. I was advised by you, at that time, that any seniority I may have held under the Agreement between your Carrier and Local 233 was automatically terminated as a result of my dismissal from service while working as a Sleeping Lounge Car Attendant.
>
> Please consider this as a time claim filed on my behalf for net wage loss suffered by me since the date I reported for work under the Agreement between Local 233 and the New York Central Railroad. This claim is based on my contention that my seniority, under the Agreement between Local 233 and the New York Central, could only be terminated in accordance with the provisions of Rule (6) of that Agreement. As I was not accorded a hearing in accordance with the provision of that rule, I request that your Carrier immediately allow me to exercise seniority under the agreement in question."

On July 7, Carrier denied this claim and gave as a reason:

> "I cannot agree with your position that you were not accorded a hearing as contemplated by Rule 6 of our Agreement with Local 233. That rule requires that 'employes shall not be disciplined, suspended (except pending investigation) or dismissed without a fair and impartial trial.' On April 24, 1962, you were given a full, fair and impartial hearing. You had been notified by letter dated April 13,

1962, of the charges pending against you, and of the date, time and place of the hearing. You were informed of your right to representation and had representation of your choice. Your representative was afforded full opportunity to question all the witnesses who appeared, and exercised that right. The hearing which you received on April 24 fully met all the requirements of Rule 6 of our Agreement with Local 233."

On July 15 Claimant wrote Carrier, requesting leniency and a job in any kind of service. On July 18 he wrote Carrier's final appeal officer who affirmed the denial of the claim. Thereafter, on September 10 Claimant again wrote Carrier pleading for leniency.

The claim before us was filed with this Division on February 22, 1963, by Claimant's attorneys.

The record in this case presents two issues:

1. When an employe holds seniority rights under two collective bargaining agreements, does his discharge for cause, while working within the collective bargaining unit of one of the agreements terminate his seniority rights under both agreements?

2. When a claim is handled on the property, ultimately, as a request for leniency, can this Division treat it as a case sounding in contract for reinstatement and an award of money damages for breach?

Seniority rights are vested contingent upon the continuation of the employer-employe relationship. In the event that an employe voluntarily terminates the relationship or should he be discharged for cause, in the absence of express provision in the agreement to the contrary, his vested seniority rights at the time of either occurrence are dissolved. We do not feel that this principle is affected where the employe may have had seniority rights under more than one collective bargaining agreement to which the Carrier is party.

The rights of an employe to a fair and impartial hearing before being dismissed, both under the Porters' and Local 233 agreements, are substantively and procedurally the same. Where the charge in a disciplinary case is violation of the Carrier's Rules, the only contractual obligation of Carrier is compliance with the procedures attendant to discipline as prescribed in the collective bargaining agreement(s). We found in Award No. 11769 that Carrier fulfilled this obligation and found that Claimant's dismissal from service was supported by the record. The dismissal from service terminated the employer-employe relationship. The dissolution of the relationship dissolved the rights enjoyed by Claimant as an employe. We will deny the claim.

We find, also, that the evidence in this case supports the conclusion that the claim was processed on the property, ultimately, as a request for leniency. When such is the fact, we have, as we do here, deny the claim.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January 1964.