

Award No. 14347

Docket No. DC-15700

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arnold Zack, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES, LOCAL 849

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD CO.

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, local 849 on the property of the Chicago, Rock Island and Pacific Railroad Company, for and on behalf of Waiter, Henry A. Williams that he be restored to service and compensated for net wage loss, with seniority and vacation rights unimpaired, account of Carrier dismissing Claimant from service on January 29, 1965, in abuse of its discretion and in violation of the Agreement.

OPINION OF BOARD: Mr. Henry A. Williams, a waiter assigned to the extra board was called for service on December 23, 1964 but advised the Chicago Commissary on that date that he was sick and thus unable to protect his assignment. On December 28 or 29 he informed the Carrier that he had recovered and was available for assignment.

On January 7, Williams claims that while working as a Pantryman on Dining Car 434 Train 13, he sustained a twisted ankle injury tripping over a broken slat in the pantry. This injury he argues was aggravated by tripping again on the same unrepaired slat on January 8th. As a result he asked for a replacement and on his return to Chicago went to his physician who bandaged the ankle and instructed him to put no strain on it. Thus, he claims, he was unable to work for the Carrier on January 8 (Train No. 13) and January 9 (Train No. 12). On Monday, January 11, 1965 he reported to the Company physician who examined his bandaged ankle and released him for return to service.

On January 8, 1965, and January 12, 1965, the Carrier notified Williams of investigations into his reporting unable to work on these aforementioned dates in view of a report received by the Carrier that Williams had been working for another Company on December 23-28, 1964 and January 8-10, 1965. The investigation notices indicated that work for another Company when out for illness and/or accident constituted a violation of Rule N of the C.R.I.&P. Railroad Company's General Notice and General Rules, as follows: "Employees who are * * * dishonest will not be retained in the service." These investigations were held on the morning and afternoon of January 21, 1965. At the investigations the Carrier revealed a letter from United Airlines indicating that the Claimant had worked there on the dates in dispute. The Claimant acknowledged that he had worked for United on the December dates in dispute, and that his physician gave him permission to work for the second employee in January

with a cut shoe if he put no strain on the ankle.

On January 29, 1965 the Claimant was notified that his employment with the Carrier and any and all seniority rights were being terminated as of that date because the investigations had sustained the Carrier's contention that he had actually worked for another Company on days when he had reported sick and injured and not able to work for the Carrier; this being in violation of Rule N cited above.

The Organization contends that Claimant was genuinely sick on the dates in question and that neither the claimed illness nor injury were challenged during the investigations. It asserts, therefore, that since Claimant was unable to work for the Carrier he was free to work for another employer inasmuch as it did not interfere with his responsibilities to the Carrier. This was particularly true, the Organization contends, because Carrier representative had previously authorized his working for United Airlines and tolerated it without objection up to these occurrences. Accordingly it concludes that the Claimant should be reinstated with full seniority and vacation rights with back pay for earnings lost to him.

The Carrier takes the position that although permission had been granted to the Claimant to work for United Airlines on such occasions that did not interfere with his obligation to the Railroad, his actions in this instance constituted a fraudulent attempt to evade his responsibilities to the Carrier. It argues that Williams' reason for not filling his position on the dates in question was so that he could meet the requirements of his other job, and that he was dishonest in attempting to cover up his absence with stories of ankle injury and cold. Had these in fact been true illnesses, he should have gone to the Company physician to have them verified and treated and if as serious as contended they would probably have precluded him from working for the Airline as well. The Carrier asserts that the Claimant was given full opportunity to establish his innocence of the charges at the investigations and having failed to do so, he must now bear the penalty properly imposed by the Carrier on January 29, 1965.

The essential issue in this case is whether or not the Claimant was dishonest as that term is used in the General Notice and General Rules. There is no question that he did not cover his positions on the days in question, nor is there any doubt that he did in fact work for United Airlines on those days.

What is of concern is the manner in which the Claimant sought to juggle both jobs. It is clear that he had been authorized to work elsewhere when his services were not needed by the Carrier and as long as such work did not interfere or conflict with his responsibilities to the Carrier. But his actions in this case appear to have placed his United Airlines responsibilities before those to the Carrier. He was dishonest in the manner in which he carried out his reporting off. He made no mention to the Carrier representatives of demands that he work at United Airlines on those dates. He did not go to the Carrier's physician when first injured as requested or when he professed having a cold. He delayed his physical examination for the ankle injury so that he missed the train for which he had been scheduled, and he brought forth no corroborative evidence of his cold malady. He had ample opportunity to strengthen his case of illness and injury by taking the Company provided examinations, not only failed to do so, but went to work as previously scheduled on his other job. His attitude toward his responsibilities to the Carrier was thus one of evasion and dishonesty deserving of a measure of discipline.

As noted by this Board in Award 2496:

"* * * a carrier had the right to expect absolute loyalty and full cooperation from its employees, otherwise the interests of the Carrier are jeopardized and the public interest is not subserved. An employe who fails to fulfill his fundamental obligations to his employer subjects himself to disciplinary action."

And again in Award 5189 (Boyd):

"The Carrier has the right to assume that an extra employe will not wilfully or capriciously refrain from responding to a call; and if a Carrier has reason to believe, after a fair hearing that an extra employe failed, without just cause to be available to receive and respond to a call for service, it may subject such employe to discipline."

Despite the finding that a disciplinary penalty is justified, we are unable to agree with the Carrier that a discharge penalty is proper in this case. Williams has over two decades of service, and had been led by the Carrier to believe that he could maintain loyalty to his two employees. Although he clearly sought to exploit one relationship to preserve the other, we are convinced that given a reasonable penalty, the Claimant will so be able to adjust his behavior as to become once again a valued employe of the Carrier. Thus we find that he should be reinstated with full seniority and vacation rights but without compensation for earnings lost to bring home to him the seriousness and primacy of his obligations to the Carrier.

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 but the penalty should be reduced.

A W A R D

Claimant shall be reinstated with full seniority and vacation rights but without any back pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of April, 1966.

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