



Award No. 16016

Docket No. MS-16928

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

WILLIAM C. HUGHLEY

NEW YORK CENTRAL RAILROAD

STATEMENT OF CLAIM:

(a) That the Carrier's action in discharging petitioner was in violation of paragraph "one" under the heading of illness.

(b) That petitioner's name shall be restored to the status of a retired employee.

OPINION OF BOARD: Claimant in this case has been an employe of the railroad for over forty years, the major portion of those years having been spent with the Pullman Company. Since July 1, 1958, he has been employed by the New York Central, one of the disputants, as a sleeping-lounge car attendant. The facts in this case concisely stated are that from July 1 through December 31, 1958, Claimant performed all the service required of him by Carrier. Subsequent to this time, it appears he was available for work on a part time basis. In one year, for example, he actually worked approximately one third of the number of hours he could have worked, had he so desired.

Carrier ascertained that Claimant had been employed by the City of New York as a provisional laborer since July 1, 1959 at \$5,240 per annum. The evidence before us indicates that during 1962 and 1963, he performed some service for the Carrier, the last day of work having been June 28, 1963. From June 29, 1963 to December 1, 1963, he was called for assignment from the extra board on 64 occasions. Claimant failed to respond to these calls 55 different times and in accordance with the rules, was passed on the Board. He stated that he could not accept the remaining nine.

On December 3, 1963, Claimant called the Dispatcher and asked whether there was any sleeping lounge car job going to Albany, New York. When he was informed that Carrier had no assignments to Albany, he said that due to the condition of his legs he was unable to accept assignments for long distances. His name was consequently removed from the extra list. On September 16, 1964, the Travelers Insurance Company made inquiry of Carrier relative to Claimant's employment status. Carrier replied that Claimant had not performed any service during 1964, and stated that it was their understanding that Claimant was employed elsewhere. His policy with Trav-

elers was rejected, and he then protested Carrier's assertion that he was no longer their employe.

Carrier informed Claimant that by taking outside employment without the Carrier's written permission, constituted a violation of Rule 35 of the Agreement. Thereafter, Claimant was advised that, if he so desired, Carrier would have a hearing on this matter. This was requested by Claimant and a hearing was held. After the hearing, Carrier informed Claimant that by taking the position with the City of New York without the written permission of the Carrier, he was in violation of Rule 35 and was, accordingly, no longer an employe.

Carrier contends, and we agree, that this dispute has not been handled on the property in accordance with the provisions of the Railway Labor Act. Specifically, they aver that this dispute was not presented and handled on the property in the usual manner and, hence, does not conform to Section 3, First (i) and Circular No. 1 of the National Railroad Adjustment Board. The only issue handled on the property with the Carrier was contained in an appeal made to the Carrier's highest appeals officer by the Organization and pertained to Rule 35. The appeal does not include the Statement of Claim presented in Claimant's notice of December 7, 1966 to this Division and alleged a violation of paragraph "one" under the heading of illness. In view of this, we are unable to consider this case on its merits and must dismiss it for lack of jurisdiction.

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 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 the Claim is barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1967.