

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19661
Docket Number TE-19863

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
((Former Transportation Communication Division, BRAC)
PARTIES TO DISPUTE: (
(Norfolk and Western Railway Company
((Involving employees on lines formerly operated by the
(Wabash Railroad Company)

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Norfolk & Western Railway Company (Wabash), TC-5366, that:

Disqualifying T. H. Grider for all future Agency work is a violation of his rights as an employe and of the Agreement he was working under, also unreasonable and without basis; and

Carrier shall remove this restriction with respect to claimant's future work, and shall compensate him for any wages lost by him due to these restrictions, beginning November 26, 1971, and shall pay eight per cent per annum on all amounts accruing and withheld because of this violation.

OPINION OF BOARD: Claimant, an Extra Board Employee, was assigned to fill a vacation vacancy of the position of agent at Streator, Illinois, from September 4 to October 12, 1971. As a result of a station check on October 1, 1971, claimant was given a hearing and under date of November 26, 1971, he was advised that he was disqualified from working any agency position because of his "failure to maintain records in a satisfactory condition while working as Relief Agent at Streator, Illinois."

Eleven days later claimant was dismissed from service for violation of safety rules. This dismissal was upheld in recent Award 19560 (Lieberman) and, thus, an Award sustaining the claim in the instant dispute would be limited to an eleven day period.

From our study of the investigation of claimant's work at Streator, Illinois, we must conclude that substantial evidence supported Carrier's findings of unsatisfactory record keeping and there is no question that the record supports a suspension for the eleven day period involved herein. As to the time beyond the eleven day period, prior Awards make it clear that the case is moot. In Award 19177 (Daly) this Board said:

"This Board, in Award 9571, held that Claimant forfeited his seniority as of August 21, 1954 under Rule 17(f) for failure to exercise his seniority to any other position within the five-day period therein provided. Consequently, the questions raised here, i.e., whether he is entitled to payment in lieu of vacation he would have received in 1955 and that his name should be restored to the 1956 seniority roster, are now moot. Claim will be dismissed." (emphasis supplied)

And in Awards 14306 and 14807 (without Referee), we ruled that a final dismissal moots a collateral case of the same claimant. In those Awards we said:

"Inasmuch as the Carrier's action of dismissing Claimant McBride in a subsequent disciplinary proceeding was sustained by this Board in Award 14248 the issue in the present case has become moot. Accordingly, the claim will be dismissed." (emphasis supplied)

For the foregoing reasons we shall dismiss the claim.

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 not violated.

A W A R D

Claim denied for period November 26 to December 7, 1971; Claim dismissed for period December 8, 1971 and subsequently.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of March 1973.