

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22479  
Docket Number CL-22481

Paul C. Carter, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employees  
(  
(Chicago, Milwaukee, St. Paul and Pacific  
( Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-8535) that:

1) Carrier violated the Clerks' Rules Agreement at Chicago, Illinois when it unjustly treated employee T. W. Ortman by arbitrarily and unilaterally dismissing him prior to preferring charges and holding an investigation.

2) Carrier shall now be required to reinstate T. W. Ortman to its service with seniority and all other rights unimpaired, clear his record, and compensate him at the established rate of pay of Second A.C.O. Position No. 73020, plus all overtime accruing to that position beginning on September 2, 1976 and continuing until he is restored to service.

OPINION OF BOARD: Prior to September 2, 1976, claimant was the regularly assigned occupant of Position No. 73020, Assistant Chief Operator-Communications, with assigned hours 12:00 midnight to 8:00 A.M., Sunday through Thursday.

At about 10:30 P.M., September 2, 1976, the claimant notified the Wire Chief on duty that due to breakdown of his car, he would not be able to work that night. When the Relay Office Manager, claimant's superior, was informed of the situation, he called the claimant, asking about other means that may be available for claimant to get to work. The claimant told the Relay Office Manager that other means of transportation were not available. Some rather heated discussion ensued, with the Relay Office Manager telling claimant that he expected him to protect his assignment, and claimant replying that he would not be able to be at work.

On September 2, 1976, claimant was advised:

"Please be advised that as a result of accepting leave of absence on September 2, 1976, other than as defined in the Clerks Rules Agreement, you have forfeited all seniority under Rule 23(g) of said Agreement."

Rule 23(g) of the applicable Agreement reads:

"(g) Employees accepting leave of absence other than as defined in these rules shall forfeit all seniority."

The Petitioner contends that the Carrier's action was in violation of Rule 22(a) of the Agreement, in that claimant was removed from the service without the benefits of an investigation under that rule.

It is the Carrier's position that the language of Rule 23(g) is unambiguous, the rule is self-executing, and is the controlling rule.

The question to be resolved is whether, under the circumstances that existed, Rule 23(g) was applicable.

The Carrier cites Award 21463, involving a somewhat similar situation, which dispute was progressed to the Board by an individual, and which Award held that Rule 23(g) was applicable. This Referee has carefully reviewed Award 21463, but, with due regard to the ability of the Referee who authored that award, we cannot agree that it represents a proper interpretation or application of the Agreement.

It is well settled that language used in an agreement must be given its ordinary and customary meaning, unless some other intent is clearly indicated. The commonly accepted meaning of the term "leave of absence" is absence with permission. The word "accepting" ordinarily and customarily means taking or receiving something that is offered. The failure of claimant to protect his assignment on September 2, 1976, especially after being instructed to do so by his superior officer, cannot properly be construed as "accepting leave of absence other than as defined in these rules," as referred to in

Rule 23(g). It follows, therefore, that it is our considered opinion that Rule 23(g) was not applicable. We would agree with the contention that the provisions of rule 23(g) would be self-executing if the rule were applicable.

Numerous awards have been issued by this Board treating cases of unauthorized absences, or failure to comply with instructions, as disciplinary matters, subject to handling under the applicable disciplinary rules. We have been referred to several awards involving disputes between the same parties as involved herein, where failures to protect assignments, or unauthorized absences, have been considered as disciplinary matters, and handled under the discipline procedure provided for in the Agreement. See Awards 22265, 21591, 20227, 21335, 19843, and 9677. The cited awards are evidence that it was the intent of the parties to treat offenses such as the one involved in our present dispute, as disciplinary matters to be handled under the discipline rule.

It is the conclusion of the Board that Carrier violated Rule 22(a) of the Agreement in not preferring charges against claimant and conducting investigation as provided therein.

The claim will be sustained.

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 Agreement was violated.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 24th day of August 1979.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 22479

DOCKET NO. CL-22481

NAME OF ORGANIZATION: Brotherhood of Railway, Airline and Steamship Clerks,  
Freight Handlers, Express and Station Employees

NAME OF CARRIER: Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Upon application of the representatives of the Employees involved in the above Award, that this Division interpret the same in light of the dispute between the parties as to the meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

On August 24, 1979, this Board issued Award No. 22479 in dispute between the parties in which the Employees' Statement of Claim read:

"Claim of the System Committee of the Brotherhood (GL-8535) that:

- 1) Carrier violated the Clerks' Rules Agreement at Chicago, Illinois when it unjustly treated employee T. W. Ortman by arbitrarily and unilaterally dismissing him prior to preferring charges and holding an investigation.
- 2) Carrier shall now be required to reinstate T. W. Ortman to its service with seniority and all other rights unimpaired, clear his record, and compensate him at the established rate of pay of Second A.C.O. Position No. 73020, plus all overtime accruing to that position beginning on September 2, 1976 and continuing until he is restored to service."

The issue involved in Award No. 22479 was whether Rule 23(g) of the Agreement was applicable, as contended by the Carrier, or whether Rule 22 - Discipline and Grievances, especially Section (a) thereof, was applicable, as contended by the Organization. This was the primary issue in the dispute in the handling on the property and in the submission of the parties to the Board. The Board found:

"It is the conclusion of the Board that Carrier violated Rule 22(a) of the Agreement in not preferring charges against claimant and conducting investigation as provided therein."

and issued Award - "Claim sustained."

Following the issuance of Award No. 22479, the parties disagreed over the Carrier's asserted right to deduct Claimant's outside earnings from the compensation due him under the Award.

The Carrier asserts its right to deduct Claimant's outside earnings under the provisions of Rule 22(e) of the Agreement, which provides:

"(e) If the final decision decrees that charges against the employe were not sustained the record shall be cleared of the charge; if suspended or dismissed, the employe shall be reinstated and paid for all time lost less any amount earned in other employment."

In progressing the claim to this Board the Petitioner cited Rule 22, especially Section (a) thereof, which rule is entitled "Discipline and Grievances."

We agree with and adopt the reasoning set forth in Interpretation No. 1 to Award 19804, Serial No. 269, issued on August 23, 1974, involving the same Carrier and another craft wherein the Board held:

"After the Award was transmitted to the property for implementation, the parties disagreed over the Carrier's asserted right to deduct Claimant's outside earnings from the compensation directed to be paid to Claimant by the Award. The basis for such asserted right, as stated in Carrier's Reply to the Employees' Request for Interpretation, is (1) that Rule 8(f) of the Agreement expressly authorizes the deduction of outside earnings in the instant case, and (2) that court decisions (federal and state) and Board Awards, as well as practice on this property, supports the Carrier's right to deduct outside earnings in appropriate cases. For its part, the Petitioner says that the Carrier's point (1) above is not sound because Rule 8, being a discipline rule, cannot apply here since Award 19804 noted that Carrier's action did not amount to discipline. The Petitioner also makes objection to the Carrier's entire Argument on the deduction of outside earnings (both points (1) and (2)) as being a new issue which is not properly before the Board. We believe the Petitioner is correct in labeling Carrier's point (2) a new issue, and, accordingly, we shall not consider this facet of Carrier's position. However, we do not agree that Carrier's point (1) involves a new issue and we shall therefore consider the text of Rule 8(f) which reads as follows:

'RULE 8. DISCIPLINE AND GRIEVANCES

\* \* \* \* \*

(f) If the final decision decrees the charges against the employee are not sustained, the record shall be cleared of the charge; if suspended or dismissed, the employee shall be returned to the service and paid for all wages lost, less amount earned in any other service.'  
(Underlining added)

"The Carrier is entitled to make deductions from the compensation allowed in Award 19804 in accordance with the underlined portion of Rule 8(f). In processing the claim to this Board the Petitioner cited paragraph (a) of Rule 8, entitled 'Discipline and Grievances'. This rule, paragraph (a) through (g), sets out a body of procedures which become applicable when an employee is alleged to have been wrongfully disciplined or dismissed. Once the Petitioner took the position that the Claimant was wrongfully dismissed under paragraph (a) of Rule 8, the relief being sought automatically became subject to paragraph (f) of the same rule. And since the effect of Award 19804 was that the Carrier's action became a wrongful dismissal of Claimant on September 28, 1971, the Award is subject to paragraph (f) of Rule 8."

Rule 22(e) in the present case is comparable to Rule 8(f) referred to in Interpretation No. 1 to Award 19804, Serial No. 269, and we agree that the Carrier's contention concerning its application does not constitute a new issue. See also Interpretation No. 1 to Award 12242, Serial No. 210, issued October 9, 1970; Interpretation No. 1 to Award No. 20033, Serial No. 283, issued on February 13, 1976; Interpretation No. 1 to Award No. 8 of Public Law Board No. 1844, and Second Division Award No. 1638.

The rules and circumstances involved in Award No. 14162 were not comparable to the rules and circumstances involved in Award No. 22479.

We hold that Award No. 22479 is subject to Section (a) of Rule 22.

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Referee Paul C. Carter, who sat with the Division as a neutral member when Award No. 22479 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*A. W. Pauls*  
Executive Secretary

Dated at Chicago, Illinois, this 18th day of April 1980.