

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24228
Docket Number CL-23970

Robert E. Peterson, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,
 { Freight Handlers, Express and Station Employees
 { Louisville and Nashville Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9374)
that:

1. Carrier acted in an arbitrary, capricious and unjust manner and violated the Agreement between the parties when it dismissed Clerk H. J. Marshall from the service of the Company effective December 14, 1979.
2. In view of the foregoing arbitrary, capricious and unjust action of the Carrier, it shall now be required to:
 - (a) Restore Clerk H. J. Marshall to service of the Carrier immediately.
 - (b) Pay Mr. Marshall for all time lost commencing with December 14, 1979 and continuing until he is restored to service.
 - (c) Pay Mr. Marshall any amount he incurred for medical or surgical expense for himself or dependents to the extent that such payments would have been paid by Travelers Insurance Company under Group Policy No. GA-23000 and, in event of the death of Mr. Marshall, pay his estate the amount of life insurance provided for under said policy. In addition, reimburse him for premium payments he may have made in the purchase of substitute health, welfare and life insurance.
 - (d) Pay Mr. Marshall interest at the statutory rate for the State of Kentucky for any amounts due under (b) thereof.

OPINION OF BOARD: The basic issue to be decided in this case, simply stated, is whether or not Carrier had the right to remove Claimant's name from the seniority roster upon its determination Claimant had engaged in outside employment while off account injury.

Claimant was initially employed by Carrier as a vacation relief clerk in its mechanical department, and subsequently transferred to a clerical position in the Manager of Capital Expenditures' office, establishing seniority in the latter department as of January 13, 1969.

According to the Carrier, on Monday, November 1, 1976, Claimant contacted his supervisor and explained he was absent from his assignment because of an injury he sustained while at work on Friday, October 29, 1976, for which he was hospitalized; a written accident report which Claimant submitted on November 10, 1976 stating that he lost his footing and fell as a result of stepping on the top

of a felt pen lid which was lying in the aisleway of the file room. Thereafter, Claimant's position was advertised for bid on the basis of Claimant being on "Injury Leave". Subsequently on October 14, 1977, Claimant brought suit against the Carrier, seeking, the Carrier states, damages in the amount of \$175,400 on his complaint that, as a result of the fall he sustained he was seriously injured and unable to perform his usual and full duties as a clerk for the Carrier.

It is the Carrier's contention that in the early fall of 1979 it learned that Claimant had graduated from law school, had been admitted to the Bar, and was practicing law, the latter, Carrier asserts, without having been granted permission to engage in outside employment as required by Rule 36(b) of the applicable collective bargaining agreement.

Rule 36(b) of the Agreement between the parties reads as follows:

"RULE 36 - LEAVE OF ABSENCE

(a) LEAVE OF ABSENCE REQUEST: Any leave of absence of 30 days or more ***.

(b) OUTSIDE EMPLOYMENT: An employee absent on leave or off account sickness or injury who engages in other employment will forfeit his seniority unless special arrangements shall have been made with the official granting the leave of absence and the General Chairman. (Underscoring Ours)

It the Brotherhood's contention on behalf of Claimant that activities in which Claimant was engaged while off duty injured did not represent a violation of the above Rule. It asserts the fact Claimant had represented others in legal actions or in courts of law as an attorney were but "training exercises", and that he had not been compensated by others for those activities cited by the Carrier. The Brotherhood also makes the rather broad contention the actions taken by Carrier were flagrant violations of the Agreement, most particularly Rule 43, Discipline. It submits Claimant had been denied benefit of a fair and impartial investigation for various stated reasons.

This Board finds no purpose to be served by unduly extending this Opinion to analyze all the arguments of the parties relative to their respective position on each issue. We think it enough to say that after careful examination of the rather voluminous record, including a 104-page transcript plus its 17 exhibits, there is no real basis to hold Claimant had been denied his fundamental rights to due process or to find Carrier's actions to be in violation of the Agreement.

The Board is of the opinion the numerous activities documented and presented into evidence by Carrier, including transcripts of court proceedings, wherein Claimant was shown to be the attorney of record, do in fact represent more than training exercises and thereby support a finding he had engaged in outside employment within the meaning and intent of Rule 36(b). Consequently, the Rule placing responsibility upon the Carrier to terminate the services of an employe where no special arrangements have been consented to between the Carrier

and the General Chairman of the Brotherhood for an employee while engaged in other employment, this Board is compelled to hold under the express terms and conditions of Rule 36(b) that Claimant has indeed forfeited his seniority under the Agreement.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of March 1983.