

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25587
Docket Number MS-25631

Paul C. Carter Referee

(Jude Sadowski

PARTIES TO DISPUTE: (

(Pittsburgh & Lake Erie Railroad Company

STATEMENT OF CLAIM: I was improperly and unlawfully discharged in violation of the labor agreement.

OPINION OF BOARD: The record shows that the Claimant (Petitioner herein) had been an employe of the Carrier since July 8, 1968, when he was hired as a Track Laborer. He resigned that job on September 11, 1968, to return to school, and was rehired by the Carrier in the same capacity on June 2, 1969. On October 1, 1969, he transferred from the Maintenance of Way Department to the Transportation Department, where he started as a Porter, a job covered by the Agreement between the Carrier and the Clerks' Organization. From that time Claimant had worked in various clerical capacities until February 17, 1983, when he was assigned to the position of Scrap Cutter in the Purchases and Material Department, which position is filled from Clerks' Seniority District No. 17.

On March 22, 1983, Claimant was notified by Certified Mail in letter from Carrier's Director-Purchases and Materials:

"Arrange to appear for a formal investigation in the office of Mr. J. R. Krugle, Purchasing Agent, Suite 500 Commerce Court, Four Station Square, Pittsburgh, Pa. 15219 at 10:00 A.M. on Wednesday, April 6, 1983. Carrier records indicate that you are on assigned vacation from Monday, March 21, 1983 through Friday, April 1, 1983, inclusive. This April 6th date should enable you to secure representation and/or witnesses if you so desire without expense to the Carrier.

This investigation is being held to develop the facts and to determine your responsibility, if any, for alleged violation of the Pittsburgh & Lake Erie Railroad Company's General Rule (T) B, paragraphs 2, 6 and 7 in that you reported off duty due to alleged illness without pay on March 10, 1983, and you reported off duty due to alleged illness with pay on March 14, 15 and 16 while on all dates you were gainfully employed elsewhere."

Carrier's General Rule (T) B, paragraphs 2, 6, and 7, referred to in the letter of March 22, 1983, read:

"(T)B. Loyalty to the Company is a condition of employment. Acts of disloyalty, hostility or willful disregard of the Company's interests are prohibited. Such acts include, but are not limited to, the following:

2. Dishonesty.

...

6. Engaging in business or other activities contrary to the interest of the Company.

7. Absence without permission as well as unjustified or excessive absences."

The hearing scheduled for April 6 was postponed and conducted on April 8, 1983. Claimant was present throughout the hearing and was represented by two Organization Representatives, the Division Chairman and the Vice General Chairman. A transcript of the hearing has been made a part of the record. From our review, we find that the hearing was conducted in a fair and impartial manner. On April 11, 1983, Claimant was notified of his dismissal from service, following which claim in his behalf was initiated by the Organization Representatives, asking that Claimant's record be cleared of the charge and that he be restored to service with seniority and all other rights unimpaired and that he be compensated for all loss of wages, and made whole for medical and hospital services. The claim was appealed to Carrier's highest designated officer of appeal, but failed of settlement. On January 20, 1984, Claimant filed with this Division of the National Railroad Adjustment Board notice to file an Ex Parte Submission covering his unadjusted dispute with the Carrier.

In the hearing conducted on April 8, 1983, substantial evidence was presented that Claimant was employed as a school teacher for the Pittsburgh Public Schools, and that his work record with the school system, which was introduced into the hearing, indicated that Claimant had worked as a teacher when laying off with the Carrier and vice versa. It was developed that permission granted to Claimant to be off was based on his alleged personal illness and did not extend to his employment elsewhere. The evidence showed that Claimant marked off sick with the Carrier on March 10, 1983, and worked that date as a school teacher; that he worked his regular assignment with the Carrier on March 11, 1983, a date on which the schools were closed; and that he again marked off sick with the Carrier on March 14, 15 and 16, 1983, and that on March 15 and 16, 1983, again worked as a school teacher. In the course of the hearing Claimant submitted a statement from his doctor dated March 12, 1983, stating that Claimant be excused from work on March 14, 15 and 16, 1983; however, Claimant admitted that he worked as a school teacher on March 15 and 16. Claimant also admitted that he had submitted time cards seeking pay from the Carrier on March 14, 15 and 16, 1983, on the basis that he was sick on each of the dates and was entitled to sick leave pay under the Collective Bargaining Agreement.

The submission of time cards seeking to collect sick leave pay for days Claimant was working as a school teacher was entirely improper and, in itself, would justify dismissal.

It was also established in the hearing, that Claimant's application for employment contained the statement:

"If my application for employment is approved, I agree that subsequent failure on my part to perform as a full time employee by accepting all work available to me by virtue of my seniority or position on the roster may be treated as grounds for dismissal."

Based upon the evidence in the hearing, Claimant's dismissal was warranted. It is clear that he engaged in outside employment during the assigned hours of his regular assignment. See Awards Nos. 19933, 12438 and 20174, as well as Award No. 28 of Public Law Board No. 1300, all of which are set forth in the record. There is no proper basis for the Board to interfere with the discipline imposed by 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 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of August 1985.