

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31112
Docket No. CL-31533
95-3-93-3-524

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

(Transportation Communications
(International Union
PARTIES TO DISPUTE: (
(Monongahela Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Organization (GL-10977) that:

- a) The Carrier violated the TCU Rules Agreement, effective April 1, 1951, as revised July 26, 1990, particularly Rules 6, 16, 23 and other rules, when the Carrier failed to remove Clerk C. W. Fike, Seniority date of September 6, 1988, from the Monongahela TCU-Clerks Seniority Roster, upon his accepting a non-agreement position with another railroad, Conrail, effective September 21, 1992.
- b) Claimant C. Chamberlain, (9/06/88) now be allowed eight (8) hours time and one half pay at the daily rate of \$127.72, as a penalty, for September 21, 1992 and all subsequent dates on a continuing basis, until this violation is corrected and C.W. Fike is removed from the Monongahela TCU/Clerks Seniority Roster.
- c) Claim has been submitted in accordance with Rule 32 and should be allowed as presented. Please advise as to the pay period this claim will be allowed."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The facts in this case are not in dispute. On September 21, 1992, General Clerk C. W. Fike was granted a leave of absence to accept promotion to a management position with Conrail. On September 29, 1992, the Organization filed a claim which stated in pertinent part:

"This is to advise that the organization does not concur with this leave of absence, as it is not in accordance with the Monongahela TCU Rules Agreement. Conrail may be the sole owner [of] the Monongahela, but there are two separate rules agreements still in effect as of this date, and the issuance of a leave of absence to an agreement employee from the Monongahela to obtain a non-agreement position with Conrail is in violation of the agreement presently in effect on the Monongahela."

Specifically, the Organization pointed out that under the provisions of Rule 23 - **Leaves of Absence**, which states:

"... It is understood that the application of this Rule 23 will not permit the granting of leaves of absence to engage in business or to accept employment in outside service."

At the time of this incident, Carrier and Conrail did, in fact, operate under separate Rules Agreements. Accordingly, the Board finds that Mr. Fike's leave was "to accept employment in outside service" under Rule 23 (cited above). Thus, his name should have been removed from the Monongahela/TCU Seniority Roster as of the date of his departure from Carrier's service. There is no evidence on this record, however, to indicate that Claimant suffered any damage as a consequence of Carrier's violation of Rule 23. Therefore, the Board finds no basis for sustaining Part (b) of the instant claim.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of September 1995.