

PUBLIC LAW BOARD NO. 4070

Case No. 4

Award No. 4

JUL 28 1986

VICE PRESIDENT
LABOR RELATIONS

AUG 4 11 39 AM '86
NATIONAL RAILROAD
ADJUSTMENT BOARD

PARTIES Brotherhood of Railway, Airline and Steamship Clerks
to Freight Handlers, Express and Station Employees
DISPUTE: vs.
Union Pacific System (Western District)

STATEMENT OF CLAIM: Reinstatement of Clerk R. E. Stevens to service and pay for all time lost including March 7, 1985, and clear his personal record of all charges arising from the investigation conducted February 26, 1985.

FINDINGS: Subsequent to an investigation held on February 26, 1985, the Claimant was found guilty of falsely filing job stabilization forms. The Claimant was a furloughed protected employee receiving compensation on a monthly basis pursuant to the Job Stabilization Protective Agreement. From evidence adduced at the investigation, the Carrier determined that the Claimant did not report income received from sources other than the Carrier. On the basis of this finding, it dismissed the Claimant from the service.

The essential thrust of the Carrier's contentions are that the Claimant failed to report "compensation received from all other employment" pursuant to Article IV, Section 6 of the Job Stabilization Agreement. On the job stabilization claim forms filed by the Claimant, under the column of "outside earnings", he had noted "none".

The Organization advances its claim both on procedural and substantive grounds. With respect to the former, it mainly contends that the hearing was not held in a timely manner, and that it was

held in a location other than the home terminal. Concerning the merits, it asserts that the Claimant was not employed, in the normal sense, because his wife had performed contractual services for the outside firm and he assisted her when needed.

With respect to the procedural contentions, the Carrier served notice of the investigation on February 22, 1985. A reasonable reading of the record indicates that the Carrier acted in a timely manner in this respect. It is well established, in matters such as here, that the time limit to provide notice of hearing is triggered when the alleged violation or event causing the advancement of charges becomes known to the Carrier in a substantive manner. With respect to the location of the hearing, Rule 45, which is controlling in this instance, is permissive in that the hearing shall be conducted at the employee's home terminal "when possible". The Carrier had reasonable grounds for not holding the hearing at the home terminal and, consequently, the Claimant's rights were not violated.

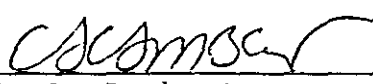
Turning to the merits, the Claimant (a protected employee under the Job Stabilization Agreement) basically argues that he assisted his wife and, accordingly, this activity alone does not constitute a bona fide employment, as normally understood and accepted. Therefore, he did not report his "outside" income to the Carrier.


The record before the Board sets forth that the Claimant, during the period at issue, was compensated for work performed for a second party. At the least, an inquiry to his employer as to the propriety of his decision not to report the monies he received was in order.


Accordingly, it is our considered judgment that under the circumstances prevalent herein, the dismissal penalty should be modified. In this regard, the Board, among other considerations, notes the Claimant's clear past record and that progressive disciplinary measures were not applied. Therefore, we conclude that the time out of service from March 7, 1985 until August 1, 1986 is more commensurate with the violation under the circumstances. This amount of time is based on a calculation of the amount of money the Claimant would have been paid during this period under his furloughed protected status and a comparison of this amount with the amount of monies improperly received by him.

AWARD

As specified in the Findings.


L. A. Lambert
Carrier Member


Eckehard Muessig
Chairman


C. S. Coleman
Employee Member

Dated: 7/25/86