

Award No. 3860
Docket No. 3768
2-NYC&St.L-EW-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 57, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Electrical Workers)**

**THE NEW YORK, CHICAGO AND ST. LOUIS
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: 1. That Electrical Worker C. Buchanan was unjustly dealt with and the provisions of the agreement violated by the following acts of the Carrier:

(a) When he was disciplined to the extent of one day's pay for Saturday, April 18, 1959 without a hearing.

(b) When he was disciplined by being assigned 15 days actual suspension without pay beginning Monday, May 11, 1959.

2. That accordingly the Carrier be ordered to compensate Mr. Buchanan for all time lost as a result of its wrongful acts.

EMPLOYEES' STATEMENT OF FACTS: (a) Mr. C. Buchanan is employed by the carrier in its Communications Department and his name appears on the seniority roster with date of November 20, 1920.

(b) Mr. C. Buchanan is assigned as a section lineman, with headquarters at Ft. Wayne, Indiana.

(c) Mr. C. Buchanan is regularly assigned to road work and paid on a monthly basis.

(d) On April 20, 1959, monthly rated Electrical Workers C. Buchanan was disciplined without a hearing when he was notified that he would be docked one day's pay for Saturday, April 18, 1959.

(e) On April 20, 1959, Mr. C. Buchanan was notified of a hearing to be held April 28, 1959, on the following charge:

"You are charged with not being available for call at permanent residence address, at headquarters on Saturday, April 18, 1959."

Section Linemen reside at their headquarters location, so they generally can be called there and be able to respond promptly if required to do so on Saturday and Sunday. The exception of course, is when you request and are given permission to be away from your headquarters on a week end, when arrangements are made to protect your territory.

Whatever you may consider as your 'legal residence' is your personal affair and is immaterial to the job requirement outlined above which, on the other hand, is a matter of concern for both you and this company.

Advise at once whether you are now meeting job requirements by living at Ft. Wayne, your headquarters location, on Saturday and Sunday.

/s/ S. W. Miller"

to which Claimant Buchanan replied as follows:

"Ft. Wayne, Ind.
Sept. 22, 1958

"Mr. S. W. Miller
Supt. Comm.
Cleveland, Ohio

"This refers to your letter Sept. 16. I am now meeting job requirement at Ft. Wayne—by living at Ft. Wayne.

/s/ C. Buchanan"

The evidence developed at the hearing confirms that the claimant not only was unavailable on the date in question but that he had chosen to disregard instructions at will in the past and also that he did not know whether he would be available at his residence at his headquarters location on Saturdays in the future.

On the basis of the record there is convincing evidence that the claimant was disciplined for just cause consistent with the requirements of Rule 18. That discipline should not be disturbed.

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 were given due notice of hearing thereon.

Claimant, an electrical worker, is a section lineman responsible for the maintenance of 85.3 miles of pole line, with headquarters at Fort Wayne, about half way between his section limits. He is paid a monthly salary but regularly works only five days, Monday to Friday, inclusive, and is on standby

status on Saturday. On that day ordinary maintenance or construction work is not required under his monthly salary, and if performed is additionally compensated. It is an operating requirement that he be on standby status at Fort Wayne, his headquarters, on that day. Apparently there are emergency exceptions, for in this instance a message was sent claimant that Mr. Zehner, the lineman at the west end of the section, was absent because of a death in the family.

On Saturday, April 18, 1959, claimant could not be contacted at Fort Wayne because he was at Oakwood, Ohio, forty miles to the east. The claim is (a) that without a hearing one day's pay was deducted from his monthly wages and (b) that after a discipline hearing fifteen days suspension without pay was assessed against him.

During the preceding year, after some discussions, claimant stated to the Superintendent of Communications in writing "I am now meeting job requirements at Fort Wayne by living at Fort Wayne." But at the investigation he stated that he followed that requirement only part of the time, resided at Oakwood when he pleased, and didn't know whether in the future he intended to be available at Fort Wayne on Saturdays.

He declined to state where he was on April 18th, but the record shows that he was at Oakwood, Ohio, and that at a time not stated he informed the first trick operator at Fort Wayne by telephone where he would be. But whoever answered the supervisor's call at 8:55 A.M. was unable to give that information. Supervisor Lewis called claimant's residence phone at Fort Wayne four times, and on the first call, at about 9:30 A.M. was told by claimant's nephew that he did not know where claimant was but would have him call if Lewis would leave a number; that he might be down the street, or that he might have gone to Oakwood to see his daughter.

It is argued that if Lewis had left a number claimant could have been contacted in ten minutes and could have been at Fort Wayne in forty-five minutes more. It is not questioned that Carrier has the right to prescribe operating rules and reasonable job requirements not contrary to laws or agreements, or that the residence and availability requirement is reasonable.

But it is stated that for several years the practice had been for monthly paid employes covered by Rule 9 to notify the Cleveland Office when they would not be available for call on Saturday or Sunday and that no penalty was imposed, but that adjacent maintainers and district linemen were notified so that they could protect the territory; that the Superintendent of Communications ended that practice more than a year before this incident and now insists, under penalty of discipline, that they be available at permanent residence addresses at their headquarter points on Saturday. The argument is that "these innovations constitute unilateral changes in the working conditions of these employes and are therefore a violation of Section 2 Seventh of the Railway Labor Act." That provision relates to "rates of pay, rules, or working conditions * * * as embodied in agreements," and not to operating rules or job requirements. Furthermore, the change complained of, if made, is not relevant here, since there is no contention that claimant notified the Cleveland Office that he would not be available, so as to come within the prior practice. Finally, the practice seems not to have been changed materially, since Zehner apparently gave notice of his expected absence, and accordingly a message was sent to claimant so that he would be ready to protect Zehner's territory if necessary. It is not suggested that Zehner was disciplined in any way for his absence or notice.

The record contains eight affidavits to the effect that prior to September 1, 1949, monthly paid employees were not penalized if the Carrier was unable to locate them on standby days. But that would seem merely to evidence leniency in enforcement of operating rules or job requirements, which would not bind the Carrier in subsequent incidents even if analogous, which is not shown to be the case here.

It is further contended that as no emergency existed claimant's unavailability at his home point was not subject to penalty. But as noted above, the question of the nature of work required on standby days relates to the question of pay rather than to the question of required availability.

Under the circumstances the Board cannot conclude that the fifteen days suspension was either unwarranted or excessive.

The deduction of the Saturday pay without a hearing presents a different question. The Carrier asserts that it does not constitute discipline, but merely the non-payment of wages for a day on which Claimant was absent. But claimant was not an hourly or daily rated employe absent on a work-day; he was a monthly rated employe absent on a standby day. Consequently a deduction from his monthly pay constitutes a penalty, which cannot properly be imposed without a hearing.

AWARD

Claim 1 sustained as to Item (a) and denied as to Item (b) and

Claim 2 sustained to the extent of one day's pay for Saturday, April 18, 1959.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of November, 1961.