

Award No. 6045

Docket No. 5877

2-CRI&P-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. — C. I. O. (Carmen)**

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(1) That under the applicable Agreements, the Carrier improperly denied Carman F. B. Beckett, Jr., 30 minutes pay for December 26, 1968 and eight hours pay for December 25, 1968.

(2) That accordingly the Carrier be ordered to compensate the aforesaid claimant for 30 minutes pay for December 26, 1968 and eight hours pay for December 25, 1968.

EMPLOYEES' STATEMENT OF FACTS: Carman F. B. Beckett, Jr., hereinafter referred to as the claimant, is employed by the Chicago, Rock Island and Pacific Railroad Company, hereinafter referred to as the carrier, at their El Reno, Oklahoma Repair Track, on the day shift with rest days of Saturday and Sunday. The claimant worked 8 hours on Tuesday, December 24, 1968 and was properly paid for this time under the agreement. Christmas Day the claimant did not work. On December 26, 1968 the claimant worked 30 minutes and went home. The carrier has refused to pay the claimant for this 30 minutes pay and also has refused to pay the claimant the holiday pay for December 25, 1968.

This dispute has been handled with the carrier up to and including the highest officer so designated by the carrier, with the result that he has declined to adjust it.

The agreement effective October 16, 1968 as subsequently Amended, is controlling.

POSITION OF EMPLOYEES: The claimant, after working 30 minutes on December 26, 1968, went home account of being sick. The carrier has refused to pay him for the 30 minutes worked and as a result of this refusal to pay him for the 30 minutes time the carrier is contending he has not qualified for Holiday Pay for December 25, 1968.

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 waived right of appearance at hearing thereon.

The undisputed facts in this case disclose that Claimant is employed as a Carman by Carrier with assigned hours of 8:00 A. M. to 4:30 P. M. On December 24, 1968, Claimant worked his regularly assigned hours. On December 25, 1968, he was scheduled to work, but was unable to report for service because of illness. On December 26, 1968, Claimant reported for work at 7:45 A. M. and was given his work assignment for that day at 8:15 A. M., at which time, Claimant informed his foreman that he was ill and could not continue that day's work. Claimant punched out at 8:30 A. M. Carrier contends that Claimant informed his foreman at 8:15 A. M. that the only reason he reported was to qualify for holiday pay. Rule 6, Section 3, requires that a regularly assigned employe shall qualify for holiday pay if compensation paid him by the carrier is credited to the workdays immediately preceding and following such holiday. Carrier then charged Claimant with leaving his job without permission and attempting to defraud the Carrier. An investigation was held and Claimant was found guilty and assessed 30 days suspension. This penalty, however, was held in abeyance because of his previous record and the fact that Claimant was actually ill on December 25, 1968, which was the proper cause for him leaving the job on December 26, 1968. No challenge was made to the investigation or to the findings. Carrier contends that the undisputed result of the investigation has determined the issue involved in this case.

Carrier's contention is well taken. In order to sustain this claim, this Board would necessarily have to rule contrary to the findings made in the investigation. The time for appeal from the investigation findings has long expired and therefore, the issues determined in the investigation are final and binding under the doctrine of res judicata. This Board has no authority, at this late stage of proceedings, to reconsider those issues previously determined and laid to rest.

There being no evidence to the effect that an appeal was taken from the results of the investigation within the prescribed time limits, this case will be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November, 1970.

Keenan Printing Co., Chicago, Ill.

Printed in U. S. A.