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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6384
Docket No. 6234
2-SPT(PL)-CM-'72

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (System Federation No. 114, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Southern Pacific Transportation Company (Pacific Lines)

Dispute: Claim of Employees:

- 1 - That the Southern Pacific Transportation Company, hereinafter referred to as Carrier, on September 8, 1970 knowingly violated Rule 10 when Carman R. G. Rafter was instructed by a Supervisor to report for work on the morning shift, he did report, was not used, sent home with instructions to report on the afternoon shift.
- 2 - That Carman R. G. Rafter hereinafter referred to as Claimant be compensated four (4) hours pay at his pro rata rate of pay in effect on September 8, 1970 account of said Rule violation.

Findings:

The Second 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.

Claimant was a carman with a vacation relief assignment. Just prior to leaving on his annual vacation, claimant was told that it was not definitely known on which job he would be relieving upon return from his vacation, and hence he was instructed to contact the departmental foreman (Mr. Weel) on the day before he was due back.

On the day before his scheduled return to work, Claimant telephoned the office, was told that Mr. Weel had left for the day and he talked to Second Shift Foreman Nelson. It is clear that Mr. Nelson did not give Claimant any assignment; the nature of the conversation is in dispute as will be indicated below. Claimant reported in on the following morning at 7:30 A.M., was told to go home and report on the 3:30 P.M. shift (by Mr. Weel). Claimant did report and work the shift beginning at 3:30 P.M.

Rule 10 of the agreement reads as follows:

"Employees required to report for work and reporting, but not used, will be paid a minimum of four (4) hours at straight time rate."

The Claimant alleges that in the telephone conversation referred to above, Foreman Nelson instructed him to come in the next morning. Mr. Nelson claims that he merely told claimant to communicate with Mr. Weel when Mr. Weel was on duty to determine his assignment and insists that he did not instruct the Claimant to report for work the next morning.

We do not have evidence in support of either version of the telephone conversation and this Board, on well supported grounds, does not have the right to make findings on credibility. In this case the Board, fortunately, need not concern itself with the disputed conversation.

The employee fulfilled his obligation by making the phone call on the appropriate day; unfortunately, Mr. Weel had already left. Since Mr. Nelson, on whose shift employee worked the next day, apparently did not know of this assignment at the time of the phone conversation, the presumption exists that no assignment had been determined at that time. In any event, Claimant did what any diligent employee would normally do under similar circumstances: report for work on the first shift of his return in order not to lose time or be penalized. Under all the circumstances he is entitled to "Reporting In" compensation under Rule 10.

In the original claim it was requested that "...claim continue to draw interest at the 6% annual rate until said case is consummated". We find nothing in the rules or any other agreement providing for interest payments: this Board cannot re-write the rules. Further, considerable precedent has been established including some recent decisions in this Division (Award Nos. 6355, 6357 and 5467) as well as numerous awards on other Divisions which amply support this position.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 27th day of October, 1972.