

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

Parties to Dispute: ( International Association of Machinists  
( and Aerospace Workers  
( Southern Pacific Transportation Company  
( (Pacific Lines)

Dispute: Claim of Employes:

1. That the current Agreement was violated when the Carrier failed to compensate Machinist Helper Hubert Jackson, Jr.  $\frac{1}{4}$  hour pay on October 19, 1973 and for holiday pay for Veterans Day on October 22, 1973.
2. That, accordingly, the Carrier be ordered to compensate Machinist Helper Hubert Jackson, Jr. in the amount of eight and one quarter hours, at straight time rate of pay,  $\frac{1}{4}$  hour for October 19, 1973 and eight hours for Veterans Day, October 22, 1973.

Findings:

8 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.

This is a claim for fifteen minutes pay for October 19, 1973 and a claim for holiday pay for Veteran's Day, October 22, 1973. Claimant, a Machinist Helper, had assigned hours of 7:00 A.M. to 3:30 P.M., Monday to Friday. On Friday, October 19, 1973 Claimant punched in at 6:14 A.M. At 7:10 A.M. he told his supervisor to clock him out, he was ill and was going home. Claimant worked the full day of October 23, 1973.

Article II, Section 3 of the August 21, 1954 Holiday Agreement provides, in pertinent part:

"An employe shall qualify for the holiday pay provided in Section 1 hereof if compensation paid by the Carrier is credited to the workdays immediately preceding and following such holiday....."

Petitioner argues that Claimant did perform service on October 19th and that he had complied with all applicable rules. It is contended that Carrier had no right arbitrarily to withhold pay for that day - and for the holiday as well. It is urged that Claimant should not be penalized except via the disciplinary procedures outlined in the Agreement. The Organization, asserting that the rule above does not require any minimum amount of time to be worked in order to qualify for holiday pay, cites Awards 2517, 5126, 5127, 5128 among others, in support.

Carrier states that it would agree that if Claimant had worked for fifteen minutes on October 19th, he qualified for holiday pay; however, Carrier insists that he performed no service whatever on that day, and hence was not compensated. Carrier states that Claimant had approached his foreman prior to 7:00 A.M. on October 19th and asked him how long he would have to work that day in order to qualify for holiday pay. When asked why he wanted to quit early, Claimant is alleged to have replied that he was sick. Carrier also states that Claimant made no attempt to put on any of his protective work clothing that morning. Carrier argues that Claimant had no intention of performing any work on October 19th and deliberately and fraudulently contrived to secure holiday pay by clocking in and waiting until 7:10 A.M. to leave.

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We find nothing in the record denying the conversation Claimant had with his foreman prior to 7:00 A.M. and nothing, not even a statement by Claimant, with respect to his having performed work on that morning. It is clear that if Claimant properly should have been paid for the fifteen minutes on October 19th, he would have fulfilled the requirements of Article II Section 3 of the Holiday Agreement, supra, and should have received holiday pay. The dispute, then, devolves on the factual issue of whether Claimant performed any compensable service on October 19th. The record indicates that the foreman took the position that Claimant performed no work at all on that day and was not entitled to pay. Petitioner has presented nothing but assertions of the Organization's representatives with respect to the work issue. We cannot find that merely punching in a time card meets the test of performance of compensable service. The burden of providing all essential elements of a claim rests with Petitioner (Award 5534) and in this case we must deny the claim for failure of proof.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 31st day of July, 1975.