

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: (System Federation No. 4, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Firemen & Oilers)
(The Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That under the current agreement Laborer Eugene Linaburg was arbitrarily and unjustly denied the right to perform service on his regular assignment on July 7, 1975, and as a consequence thereof was also deprived of his Holiday pay for July 4, 1975.
2. That accordingly the Carrier be ordered to compensate Laborer Linaburg six (6) hours pay for July 7, 1975, when he was denied the right to work that part of his regular tour of duty on that date and, further, that Laborer Linaburg be allowed the eight hours Holiday pay for July 4, 1975, which he would have otherwise properly qualified for had he not been arbitrarily and unjustly denied the right to perform service on his regular tour of duty on July 7, 1975, his first work day following the Holiday.

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 regularly assigned to work as a Laborer in Carrier's Martinsburg M&W Shops on the 7:00 a.m. to 3:30 p.m. shift.

At about 7:15 a.m. on Monday, July 7, 1975, Claimant's first work day following the July 4, 1975 holiday, claimant's wife telephoned the Superintendent of Shops that Claimant would be late for work due to a dental appointment. She was advised that Claimant's services would not be needed after his dental appointment but that he was to report for his regular assignment the next day, July 8th.

At about 7:25 a.m., Claimant personally telephoned the Superintendent of Shops stating that he could be at work in about five minutes. Claimant was told not to come in that day, but to report the next day, July 8th.

Both parties refer to Rule 38, which provides in relevant part:

"In case an employee is unavoidably kept from work he will not be discriminated against. An employee detained from work on account of sickness or for other good cause shall notify his foreman as early as early as possible either by telephone, messenger, or United States mail."

Petitioner maintains that claimant's dental appointment on July 7th, which would have caused him to report late, had he been permitted to report for work after his dental appointment, was for "good cause" under Rule 38; that no Agreement Rule authorizes Carrier to prevent an employee who reports late for work on his regularly assigned work day from starting work and completing his regularly assigned hours of work; that denying Claimant the right to go to work on his regular assignment after his regular starting time constitutes discipline which is subject to the procedures of the Agreement discipline rules (e.g., advice of cause and hearing), especially since an additional effect of Carrier's action was to deny him holiday pay (for July 4th); that Claimant properly notified the Carrier in timely fashion in accordance with Rule 38 and long standing practices at Martinsburg, which is to notify Carrier "on the very day they are to be absent"; and that claimant offered to forego his dental appointment and report for duty within 5 minutes.

Petitioner further asserts that six other employees have reported late for work and have been allowed to start work and complete their shift.

In support of its position, Petitioner relies on Second Division Award 2324 (Carter).

Carrier's general position is that it is not obligated to permit an employee to start work when, as in the instant case, Carrier is notified after the start of a shift that the employee will be late and that no Rule in the Agreement requires an employee to be permitted to start work after his scheduled starting time, so that a discipline issue does not arise under these circumstances.

More specifically, Carrier (Carrier Exhibit B) quotes the Superintendent of Shops' response to the grievance, wherein the Superintendent states that prior to this incident, he "personally instructed Claimant, as well as other employees, that any time he had to absent himself from duty, to make advance arrangements with his Foreman or with me" The six employees referred to by Petitioner as having shown up late for work but nevertheless were permitted to work for the balance of their shift all had made such advance arrangements, as distinguished from the Claimant's situation.

Carrier also lays great stress of the fact that Claimant's dental appointment was made in April, some 10 weeks prior to July 7, as attested to by a letter in the record submitted by the dentist. (Carrier Exhibit F) The record also indicates that Claimant was in the dentist's office from 9:00 to 10:15 a.m. on July 7. (Carrier's Exhibit C) Carrier holds that Claimant knew long in advance of his dental appointment, and that it was incumbent on him, by virtue of Rule 38 and the Superintendent's instructions referred to supra, to have made prior arrangements with supervisor regarding such appointment on July 7. Carrier further argues that Claimant had an obligation to advise his Foreman of the dental appointment as early as possible, as required by Rule 38, and to seek permission to be late or absent. Since Claimant failed to comply with the terms of Rule 38, he loses his protection under that Rule.

Under all the circumstances described herein above, we must sustain Carrier's denial of the claim. Rule 38 provides that an employee detained from work shall notify his Foreman as early as possible. Rule 38 does not provide that he shall be entitled to work for the remainder of his shift if he is so detained. No rule accords to employees the right to report for less than a full shift as a matter of right.

Rule 38 protects an employee from discrimination if he is unavoidably kept from work. There is a corresponding obligation on the part of the employee; namely, to notify his foreman personally as early as possible of his inability to report for work as scheduled.

In Award 2324 cited by Petitioner, the employee involved was unavoidably detained from work on account of personal business. But in the case before us, Claimant knew for about 10 weeks, since April, of his scheduled dental appointment--ample time for him to notify his foreman of his absence (or lateness) on the day in question. Claimant as well as other employees had been personally reminded by the Superintendent of Shops of the requirement to make advance arrangements if he had to be absent. Claimant's failure to report for work at the regularly scheduled starting time of his shift was not unavoidable within the scope of Rule 38. Hence, the claim for 6 hours on July 7, 1975 must be denied.

Claimant, by his failure to give timely notice that he would be kept from work on July 7, failed to secure permission for such absence (or tardiness), and did not, as a result, perform work on that day. Consequently, he failed to meet the requirement that he work on the day following the July 4 holiday, in order to receive holiday pay. He thus disqualified himself by not fulfilling one of the preconditions for receipt of holiday pay.

Regardless of our personal views, we must, absent a specific rule, deny the claim for pay for the July 4 holiday, since we are limited to interpreting the applicable provisions of the Agreement as they stand.

A W A R D

Claims 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 14th day of October, 1977.