

The Second Division consisted of the regular members and in addition Referee Arthur T. Van Wart when award was rendered.

Parties to Dispute: (System Federation No. 2, Railway Employees'
(Department, A. F. of L. - C I. O.
((Carman)
(
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rule 17 of the controlling agreement when they refused Carman L. E. Godkin the right to protect his regularly assigned position January 2, 1976. The Missouri Pacific Railroad Company also violated Rule 32(a) of the controlling agreement when they disciplined Carman L. E. Godkin, January 2, 1976 by not allowing him to work the remainder of his regularly assigned shift on that date.
2. That, accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman L. E. Godkin in the amount of six (6) hours at the pro rata rate for January 2, 1976 and eight (8) hours at the pro rata rate for January 1, 1976.

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.

Claimant, on January 2, 1976, was regularly assigned as a Carman on the 7:00 a.m. - 11:00 p.m. shift at Houston, Texas. Claimant called the General Car Foreman at 9:00 a.m. on January 2nd and advised him that he would be a little late because of a dead battery in his car and that he would be in shortly. Claimant was advised that since he failed to report on time, at 7:00 a.m., the work force had already been given their job assignments with all service requirements being protected and, therefore, Claimant's services were not needed and that he would not be used or paid for that shift. The instant claim was filed February 4, 1976, alleging a violation of Rules 17 and 32.

Rule 32 - "Discipline and Investigations" in pertinent part, provides:

"(a) an employee ... shall not be disciplined ... without first being given a fair and impartial investigation..."

Rule 17 provides:

"Employees shall not lay off without first obtaining permission from their foreman to do so except in case of sickness or other good cause of which the foreman shall be promptly advised."

The Board finds the Employees' position in this case to be untenable. There was no showing made of any contractual basis, or, in fact, any other basis, which would require that Carrier provide work, on any given day, to any employee who was regularly assigned to a work shift but who had failed to report or to therefor, otherwise have successfully made an arrangement for his failure to report on or before the starting time of his work shift.

Absenteeism from duty is generally injurious to the efficiency and safety of Carrier's operations. It also violates the implied and expressed promises and obligations exchanged by all the parties in a labor-management relationship. The controlling agreement, particularly Rules 1 and 2 - "Hours of Service and Work", and "Shifts", obligates Carrier to establish positions having a work week of eight hours per day, five days per work week, as well as designating therein the starting time of shifts. It is implicit in the employee - employer relationship that each party shall live up to the bargain made. Employees accepting such positions are obligated to report for duty on or before the assigned starting time. Failure to report on time generally necessitates a change in Carrier's planning requirements. It must be presumed that an employee who is absent at the scheduled starting time of his assignment, absent any knowledge to the contrary, is therefore, not going to work at all that date. Consequently, when work is planned and jobs are assigned to meet service requirements, predicated on such a reasonable presumption, then such represents a reasonable and necessary exercise of management's right to place and direct its work force. In the instant case Claimant telephoned in, not reported in, some two hours after his scheduled starting time to say that he had a dead battery and would be in "shortly", whatever time that meant. It is held that it did not constitute an act of discipline when Claimant was told that he would not be needed or permitted to work that day. There was no employment need existing for claimant "shortly" after 9:00 a.m. There was no obligation which required that he be used. Claimant suffered from the result of his own action.

Rule 17 has no relevance to the instant dispute. Said rule clearly is limited in its application to those situations involving "lay offs". Laying off and reporting tardily are mutually exclusive terms.

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Award No. 7567
Docket No. 7498
2-MP-CM-'78

The Board finds that the Employees failed to show rule violation.
This claim will be denied.

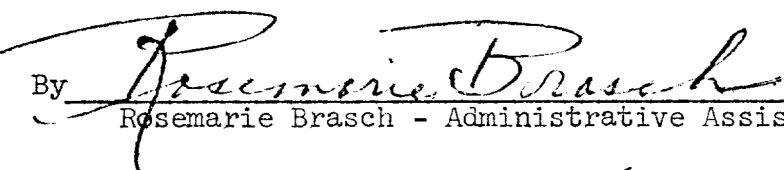
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of June, 1978.