

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8213
Docket No. 8111
2-SP(T&L)-CM-'79

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

Parties to Dispute:

- (System Federation No. 162, Railway Employees'
- (Department, A. F. of L - C. I. O.
- ((Carmen)
- (Southern Pacific Transportation Company
- ((Texas and Louisiana Lines)

Dispute: Claim of Employees:

1. That the Southern Pacific Transportation Company (Texas and Louisiana Lines) violated the controlling agreement, particularly Rules 19 and 34, when they denied Carman P. G. Montena the right to work his regular assignment on April 11, 1977 after he notified his foreman he would be late for work on that date.

2. That accordingly, the Southern Pacific Transportation Company (Texas and Louisiana Lines) be ordered to compensate Carman P. G. Montena in the amount of eight hours (8') at the pro rata rate for April 8, 1977, (Good Friday) and five hours (5') at pro rata rate for April 11, 1977, Houston, Texas.

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.

On the date in question, Claimant Montena was scheduled to work the day shift at the Englewood Car Plant from 7:00 A.M. to 3:30 P.M. He did not arrive at work until 10:00 A.M. Since the employe was not available at starting time, the Carrier made arrangement for another employe to fill his assignment on that day. Upon his late arrival, he was informed that he would not be allowed to work the time remaining on his shift. Mr. Montena filed the claim here under consideration alleging that he had sent word through another employe that he would be late that morning. His late arrival was caused by the necessity that he appear in traffic court.

The Organization in support of its position cites Rule 19 which reads in pertinent 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 any other good cause shall notify his foreman as early as possible."

They also raise the issue of Rule 34, which requires a hearing before disciplinary action may be taken. With respect to this position, numerous awards of this Board have held that where there is no rule in the agreement requiring that an employe be allowed to start work after his scheduled starting time, the discipline issue is not germane. The agreement here involved does not give an employe the opportunity to report for less than a full shift as a matter of right.

Rule 19 does protect an employe from discrimination in the event he is unavoidably absent. It does, however, contain a corresponding obligation that the employe notify his foreman as early as possible. Numerous Board awards have held that notification on the day of tardiness does not fulfill that obligation when the employe knew he would be absent for some period of time before that date. In the case under consideration, an appearance in traffic court is scheduled several days in advance of the date of the hearing. Assuming that the Claimant notified the Carrier through another employe on the morning of the day in question, as he alleged, we find that such action does not meet the early as possible requirement in this case.

1. The Carrier did not violate the contract when it refused to allow the Claimant to work the partial day remaining on April 11, 1977.
2. Since Claimant did not work on the scheduled day following Good Friday as required by the agreement to receive holiday pay, he is not entitled to such payment.

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 19th day of December 1979.