

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

Parties to Dispute: { Brotherhood of Railway Carmen of the United States
and Canada
{ Missouri Pacific Railroad Company

Dispute: Claim of Employes:

1. That the Missouri Pacific Railroad Company violated Rule 1, Section 2 (a) of the controlling Agreement June 17, 1979, when they refused to allow Carman G. W. Bland to work his regular assignment on that date because he had not called in during that day to report he was coming to work.
2. That the Missouri Pacific Railroad Company be ordered to compensate Carman G. W. Bland in the amount of eight (8) hours at the pro rata rate for their violation of his rights.

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.

At approximately 9:20 p.m. on June 16, 1979, Claimant, a Carman assigned to work the third shift (11 p.m. to 7 a.m.) at Carrier's Kansas City, Missouri Train Yard, telephoned his Foreman to advise him that he (Claimant) had car trouble and would be late in reporting for work that evening.

Claimant's Foreman, Car Foreman K. L. Marmon, was unavailable at the time and Claimant's telephone call was received by a fellow carman, A. R. Wilson, who, in turn, relayed the message to Mr. Marmon. Claimant further contends that at approximately 1:00 a.m. he telephoned Carrier a second time and advised another foreman, Mr. Lalla, "... that he (Claimant) would not be in at all on his shift on June 16, 1979 account unable to secure transportation ..." but that he (Claimant) "... would report for work the following day of his regular assignment". Carrier denies that a second telephone call was received, and the record does show that Claimant was absent for the entire shift on June 16, 1979.

Claimant further alleges that on the following evening, June 17, 1979, he reported to work at 10:58 p.m. and waited in the 200 Yard Shanty for the Foreman to call as is the usual practice. Said call was received at about 11:20 p.m. at

which time Foreman Marmon advised Claimant that he would not be permitted to work that evening because another carman had been called in to perform the assignment.

Foreman Marmon maintains, however, that because Claimant had not reported that he would be at work on his regular assignment on June 17, another carman was called off the overtime board to fill Claimant's assignment. Additionally, Foreman Marmon asserts that he attempted to contact Claimant at the Carman Shanty by telephoning every five minutes between 11:00 p.m. and 11:25 p.m. when Claimant finally answered the phone. At that point, according to Foreman Marmon, he informed Claimant that he had been replaced for that evening by a carman from the overtime board; that he would not be permitted to work that night; and that Claimant was to leave the property. Claimant complied as directed and a claim was subsequently filed which is the basis of the instant dispute.

The essence of Organization's position in this dispute is that Carrier violated Rule 1, Section 2(a) of the Controlling Agreement by refusing to allow Claimant to complete his regular assignment on June 17, 1979, because he had not notified Carrier that he was coming to work following his absence on the previous day. According to Organization, "... Carrier has no agreement, regulation or policy that requires carmen to mark up or call in and advise they will report to work after laying off for a specific date". Organization also argues that Carrier was aware that Claimant had telephoned Carrier twice: first, prior to shift start on June 16, 1979, to report that he would be late for work; and the second time at approximately 1 a.m., on June 17, 1979, when he informed Foreman Lalla that he would not be in at all but that he would be in to work his next regularly scheduled shift. Thus Organization maintains that Claimant was in compliance with Rule 17 which merely required Claimant's prompt notification to Carrier of his intended lateness and absence. In support of its position Organization offers Second Division Awards 8754, 7880, 7879 and 7809 as controlling.

Carrier's position, simply stated, is that "... Claimant failed to protect his assignment on June 16, 1979, without good cause and the Carrier properly made arrangements to call another carman when claimant failed to mark up after his unexcused absence and his lateness in reporting for work on June 17, 1979." Carrier further argues that "(S)upervision at Kansas City did not hear from (Claimant) during the calendar day June 17 from 12:01 a.m. to start of his shift at 11:00 p.m."; and that Claimant was late in reporting to work on June 17, as evidenced by the fact that Foreman Marmon was not able to contact him at the shanty in the 200 Yard until 11:25 p.m. and had called there every five minutes beginning at 11:00 p.m. in an effort to locate him. Because Carrier had operated the previous day's third shift undermanned, and because Carrier could not wait any longer than necessary to see if Claimant would show up for work on June 17, 1979, the Car Foreman arranged for an overtime board employee, Carman L. T. Edwards, to fill the assignment. According to Carrier, such a procedure, as well as the subsequent refusal to allow Claimant to work on said date, was "... necessary to protect the service ..." and was proper, and is supported by Second Division Awards 7384, 7385 and 7782.

In attempting to resolve the instant dispute, the Board is greatly distressed to find that there are considerable deficiencies in each of the positions offered by the respective parties. In this regard it is particularly significant to note that Organization has failed to proffer any sufficient degree of probative evidence

to support the contention that Claimant telephoned Foreman Lalla at 1:00 a.m. on June 17, 1979 and informed him that he (Claimant) would not be at work at all that morning but that he would report for his next regularly assigned shift. By the same token, however, there is a comparable lack of evidence on Carrier's part to support the contention that Claimant was late in reporting for work on the evening of June 17, 1979, or that Carrier secured the services of overtime board Carman Edwards at 11:00 p.m. on said day in order to protect Claimant's assignment.

Giving proper consideration to the weight of these critical deficiencies, together with the fact that Rule 17 of the parties' agreement specifically addresses the limited issue of an employee's responsibility of notification to Carrier prior to an intended absence and/or lateness, and also that the parties' respective citations, by and large, are factually dissimilar to the instant dispute, the Board can only conclude that Carrier's action in this matter was improper and, therefore, will be reversed.

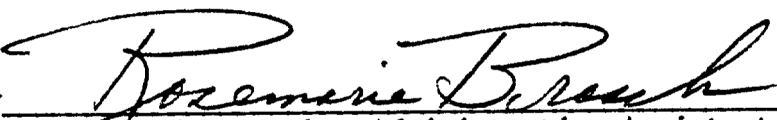
While the Board can very well comprehend the dilemma which Carrier is confronted with in this dispute and, to some degree, can support the position which Carrier now espouses, the particular facts and argumentation which have been presented in the instant dispute are insufficient to warrant such a ruling.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 29th day of September, 1982