

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

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Pacific Fruit Express Company

Dispute: Claim of Employee:

1. That the Pacific Fruit Express Company violated the controlling agreement, particularly Rules 14 and 37, when they refused to permit Carman J. H. Caves, Jr. to work his regular assignment on January 15, 1982, Tucson, Arizona.
2. That accordingly, the Pacific Fruit Express Company be ordered to compensate Carman Caves in the amount of six and one-half (6 1/2) at pro rata rate, plus fifteen percent (15%) interest account being denied the right to fill his assignment on January 15, 1982.

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 employes 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.

The material facts in this case are simple and undisputed. Claimant was employed as a Carman at Carrier's Tucson, Arizona car repair shop. He was scheduled to report for duty at 7:00 A.M. on January 15, 1982. At approximately 6:45 A.M. the Claimant telephoned the Carrier and informed a Time Card Clerk that he was having car trouble. The Claimant was unable to give the Clerk a definite time when he would be able to report for duty. When the Claimant did report at 8:30 A.M., 1-1/2 hours beyond his starting time, his position had been filled and he was sent home by the General Foreman. The Claim before this Board demands payment for the six and one-half hours Claimant states he would have worked if permitted to do so by the Carrier.

Prior to addressing the merits of this dispute, the Carrier has raised as a procedural defense that the Claim is barred by the Organization's failure to file a timely appeal during the handling of the Claim on the property. This defense is based on Carrier's contention that Rule 36 of the applicable Agreement required a rejection by the Organization within sixty (60) days after denial of the Claim by Carrier's highest Officer. A review of the procedural posture of this case reveals that the essential communications between the parties occurred as follows:

1. March 11, 1982 - Organization files original Claim with Acting Mechanical Superintendent.
2. April 1, 1982 - Denial of Claim by Carrier's Superintendent of the Mechanical Department.
3. July 6, 1982 - Organization's appeal to Carrier's Manager of Personnel.

[Mutual extensions of time for further consideration of Claim, conferencing and investigation.]

4. March 8, 1983 - Carrier's highest Officer designed to handle dispute denies Claim (no mention of any time bar to July 6, 1982 appeal).
5. November 11, 1983 - Agreement to extend the nine (9) month period referred to in Rule 36, Note: 2:1(c) of the current Agreement until January 31, 1984.
6. December 13, 1983 - Notation Agreement on Nov. 11, 1983 Agreement by both parties, extending the nine month period until March 15, 1984.
7. January 30, 1984 - Organization's rejection of Carrier's March 8, 1983 denial of Claim.

Rule 36, Note 2:1.(c) of the applicable Agreement states in its entirety, as follows:

"The requirements outlined in paragraphs (a) and (b), pertaining to appeal by the employe and decision by the Carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Carrier to handle such disputes. All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employe or his duly authorized representative before the appropriate division of

"the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the 9 months' period herein referred to." (Emphasis supplied)

The Carrier's contention that Rule 36 requires a rejection by the Organization within 60 days from receipt of denial of a claim by Carrier's highest Officer designated to handle such disputes, or the matter is to be considered closed, is contractually unfounded. Note 2:l.(c) to Rule 36, quoted above, carves an express exception to the 60 day Time Limit Rule for appeal from the decision of the highest Officer. The contractual bar, if any, to an appeal of a denial by the Carrier's highest Officer is the nine month period within which proceedings may be instituted before this Board. This nine month period may be extended by agreement. In this case, the Board finds that the parties extended the nine month period by mutual agreement to March 15, 1984. The Board finds the Organization's January 30, 1984, rejection of the March 8, 1983, denial of the Claim by Carrier's highest designated Officer to be mere surplusage. Carrier has presented no evidence that the Organization's appeal to this Division is untimely and not within the 9 month period as extended by Agreement, or that the Agreement otherwise calls for a denial of the decision of the highest Officer designated by the Carrier to handle such disputes.

Turning to the merits, the Board finds no evidence in the record that Claimant received permission from the Carrier to absent himself from his duties on January 15, 1982. It is true that Claimant did notify the Carrier that he would be late for work, but he was unable to say when he could be expected. In so doing, the Claimant fulfilled a portion of his contractual obligation to the Carrier. Indeed, had he failed to notify the Carrier, Claimant may have been subject to discipline. The fact remains, however, that the Carrier did not grant Claimant a time deadline or "grace period" within which an appearance of his person on the property would have guaranteed him work for the balance of the shift. Due to unforeseeable consequences which may, or may not have been beyond his control, Claimant was unable to report for duty as required. The fact an employee reports that he has been detained from work does not, standing alone, give him carte blanche as to his time of arrival, and a guarantee of work for the balance of his shift. "There is no rule in the Schedule Agreement which requires Carrier, in this dispute, to permit an employe to work when he reports for an assignment late. Petitioner's position on this point must be rejected. Carrier has the unqualified right to insist on adherence to working hours (not in conflict with the Agreement); and employes have the obligation to report on time for their scheduled hours in the absence of good and sufficient cause." Second Division Award No. 8045.

The Organization's position that Claimant was disciplined by not allowing him to work the balance of the shift has previously been rejected by this Board. Second Division Awards Nos. 9781, 8045 and 7946. Award No. 9781 involves facts almost identical to this dispute. The Claimant in that case had called in an hour prior to the start of his shift that he would be late for work due to car trouble. The Claimant appeared three hours after the start of his shift, but was not permitted to work the remainder of the day. In rejecting the Organization's contentions that Claimant had complied with a Rule similar to 14(C), and was improperly disciplined without a Hearing, the Board stated:


"It breaks no new ground for this Board to observe that an employee complying with Rule 16 by calling to say that he will be detained is not necessarily guaranteed work for that part of the day in which he becomes available. Rule 16 notification enables Management to be aware of who will or will not be available at the start of the shift. Beyond that the Carrier has to adjust its plans and proceed with the day's work, particularly when there is no indication of when the employee would show up during the day (as was the case here), and there is no guarantee that a late employee will fit into these plans. The exclusion of Claimant from work for the remaining five hours was not disciplinary action in this context, a general principle found in numerous Second Division Awards including Award Nos. 7384, 7355, 7567, 7838, 7990, 7946 and 8045."

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Defer - Executive Secretary

Dated at Chicago, Illinois, this 4th day of June 1986.