

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(South Buffalo Railroad Company

Dispute: Claim of Employees:

1. That the South Buffalo Railway Company violated the controlling agreement, particularly Rule 31-paragraphs (a) and (b) when on June 20, 1984 employees who were unavoidably detained from work account normally traveled access road to Roundhouse (starting point of employees) being blocked by a cut of cars, were docked one-half hours pay (.5).

2. That the South Buffalo Railway Company violated Safety Rules 12.2 and 12.3 when it allowed a cut of cars to block the normally traveled access road to the Roundhouse, which would afford the employees opportunity to get to their starting point in time to report for work. The employees, with respect to this, hold that this is a responsibility which rests solely with the South Buffalo Railway Company.

3. That the South Buffalo Railway Company be ordered to compensate Carmen 2714 R.H. Hamilton, 2716 R.M. Murray, 2774, R.A. Burger, 2761, K.L. Burley, 2784, D.J. Smith, 2805, A.M. Casell, Jr. and 2717, D.E. Boechel in the amount of 30 minutes pay each at the straight time rate.

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 employees 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 Organization contends that Carrier violated the controlling Agreement, particularly Rule 31 - paragraphs (a) and (b) when, on June 20, 1984, employees who were unavoidably detained from reporting to work were docked one-half hour's pay. It also charges Carrier with violating Safety Rules 12.2 and 12.3, which impose upon Carrier a definitive obligation to keep road crossings, streets, or other thoroughfares unobstructed.

On the aforesaid date, a switch crew, while handling a cut of cars, blocked the road crossing used by Claimants to get to their assigned work locations, thus precluding a timely arrival. The crossing was blocked approximately 55 minutes (6:30 A.M. to 7:25 A.M.).

The Organization argues that Carrier's actions singularly caused Claimants' delay and the resulting exaction of 30 minutes pay was tantamount to discipline. In essence, it asserts that Claimants were disciplined without a fair hearing, in complete contravention of Rule 31(a).

It also argues that contrary to Carrier's assertion that three alternative travel routes were available, it would have been unrealistic to expect employees who were about 400 yards from their starting point to reverse course and travel a few miles on primarily unpaved roads. It cited Second Division Award No. 4698 as controlling.

In rebuttal, Carrier maintains that three alternative routes were available and seven other employees who were in the same exact predicament availed themselves of the travel options. Consequently, Claimants were not unavoidably detained as that term is literally understood, since they could have reported to work. Furthermore, it argues that Claimants were not disciplined, since they could have reported on time and the Agreement plainly requires that eight (8) hours or less shall constitute the basic work day. It referenced several Second Division Awards to affirm its basic position that an employer has the unqualified right to insist on adherence to working hours and employees have an inherent obligation, in the absence of just and sufficient cause, to report to work on time. (See, for example, Second Division Award Nos. 8045, 8048, 7567, 7551, 7384, 7355, and 4150, et al.)

In considering this case, we concur with the Organization's position. We certainly recognize that the term "unavoidably detained" is subject to varied interpretations, depending on the unique facts and circumstances of each contested situation, but we believe, in this instance, that Claimants' judgment on June 20, 1984 was not unreasonable. The blockage was not caused by their actions; they were only 400 yards from their work situs. There were no indications that the crossing would be blocked for any length of time, and the alternate routes over unpaved roads would have necessitated travel distances of a few miles. We do not agree with the Organization's contention, however, that the docking of 30 minutes pay was equivalent to discipline without trial, since Carrier has the right, absent just and sufficient cause, to expect timely attendance and the correlative right to compensate employees for time worked.

Since we have found a mitigating exception herein, consistent with our past holdings, Claimants are to be made whole for the time docked.

Form 1
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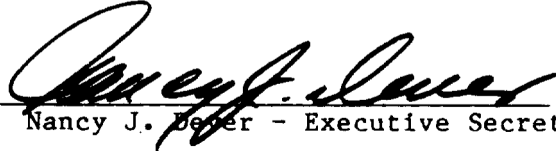
Award No. 11403
Docket No. 11036
88-2-85-2-211

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 6th day of January 1988.