

Award No. 1192
Docket No. 1129
2-CRI&P-EW-'47

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (ELECTRICAL WORKERS)**

**THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY
COMPANY (Joseph B. Fleming and Aaron Colnon, Trustees)**

DISPUTE: CLAIM OF EMPLOYEES. That Groundman Floyd Schwenk is entitled to receive pay for time lost beginning with June 12, 1946, to and including August 17, 1946, in the amount of \$467.40 account being unjustly taken out of service. He is further entitled to \$8.73 transportation.

EMPLOYEES' STATEMENT OF FACTS: On June 10, 1946, the carrier deemed it necessary to increase the force in small extra gang which was cutting transpositions at Marseilles, Illinois, by one groundman.

Groundman Floyd Schwenk was employed on Gang No. 1 at Whitewater, Kansas.

On June 10, 1946, Mr. C. N. Burton, supervisor lines and equipment, sent Mr. Lee Seeley, foreman of Gang No. 1, a message to send Groundman Schwenk to Marseilles, Illinois, to assist transposition cutters. Mr. Schwenk did not desire to leave his regular gang and transfer to small extra gang. This message was conveyed to Mr. Burton by Mr. Seeley on June 10, 1946. Mr. Schwenk understood that he would be required to operate a motor car if he went to the extra gang, and since he had never operated a motor car alone, he was afraid to attempt it on the congested territory on the Rock Island Division.

Mr. Burton sent the following wire back to Mr. Seeley 7:19 A. M. June 11, 1946.

"Schwenk will either come to Marseilles by first train as instructed or resign or you take him out of service pending investigation for insubordination answer quick."

Mr. Schwenk was removed from service on June 11, 1946, and investigation was not conducted until June 18, 1946.

The first paragraph of Rule 9 reads as follows:

"Rule 9. **Investigation Before Dismissal.** An employe who has been in the service of the Railway sixty (60) days or whose

Department, American Federation of Labor, Mechanical Section, thereof, provided you report to Foreman Seeley at Wichita, Kansas not later than Monday, August 19, 1946. Failure to do so will result in the closing of your record with this company.

If you do not intend to return to duty please forward your annual pass No. E-132 to this office by return mail."

Copies of the aforementioned letters of the carrier's superintendent of communications addressed to the claimant were furnished to the general chairman, Mr. George D. Lewis, of the International Brotherhood of Electrical Workers.

In any event, in view of the foregoing correspondence there can be no question that the claimant in this docket is not entitled to reimbursement for time lost beginning June 12, 1946, to and including August 17, 1946. As is evidenced by this correspondence, it is through no fault of this carrier that the claimant did not return to work promptly when he was authorized to do so. As a matter of fact, his failure to return to work was entirely of his own choice and against the express wishes of the carrier. Mr. Ellis' letter of June 27, 1946, unconditionally directed the claimant to return to service. Mr. Schwenk's letter of July 30, 1946, places the entire responsibility for his return subsequent to June 30 upon himself, saying he was waiting to hear from General Chairman Lewis.

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.

The parties to said dispute waived right of appearance at hearing thereon.

We find this case hazy as to issuance of bulletins, instructions, etc. Yet this did not excuse Schwenk from proceeding to do the work as instructed, and later, if necessary, handle his objection as a grievance through proper channels.

We find that when Mr. Schwenk's annual transportation was lifted, it therefore became necessary for him to pay \$8.73 railroad fare.

Some discipline was justified in this case, and therefore, we find that his being held out of service beginning with June 12, 1946, to and including August 17, 1946, at which time he was returned to service with seniority unimpaired, could not be considered unwarranted discipline under the circumstances shown to have existed in this case.

AWARD

Groundman Floyd Schwenk is not entitled to receive pay for time lost beginning June 12, 1946, to and including August 17, 1946, but is entitled to \$8.73 paid for transportation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 14th day of May, 1947.