

Award No. 1792

Docket No. 1705

2-A&S-CM-'54

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 131, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

ALTON AND SOUTHERN RAILROAD

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Car Inspector Paul J. Larsen was unjustly deprived of his right to work his regular assignment on Thursday, March 12th, 1953.

2. That accordingly the Carrier be ordered to reimburse him for said time lost of eight (8) hours at his regular hourly rate of pay.

EMPLOYEES' STATEMENT OF FACTS: Car Inspector Paul J. Larsen, hereinafter referred to as the claimant, was regularly employed by the carrier on the 11:59 P.M. to 7:59 A.M. shift in the Davis Yards at East St. Louis, Illinois, and his seniority date on the roster of "Other Carmen" is 5-9-52. This claimant, for good cause, however, telephoned the yardmaster about 11:00 P.M. on the night of March 11, 1953, that he could not work his regular assignment that night but that he would work it the next night, March 12, 1953, but the Carrier elected to blank filling his place on this 11:59 P.M. shift Wednesday, March 11.

The claimant, accordingly, reported for work at the usual time Thursday, March 12, 1953, and upon instructions of the carrier's General Car Foreman West he was not permitted to resume working his regular assignment that night on the ground that he did not again inform the carrier on March 12 that he would work his regular assignment on that date beginning at 11:59 P.M. Nevertheless, the carrier did make the election even before 3:59 P.M. on Thursday to work Carman Taylor on the 11:59 P.M. shift on the night of March 12, 1953.

The agreement of January 29, 1947, as amended on and subsequent to September 1, 1949, is controlling.

POSITION OF EMPLOYEES: It is obvious on the basis of the foregoing statement of facts and the rules of the aforesaid agreement applicable thereto that the claimant was unjustly deprived of his contractual right to work his regular assigned shift beginning at 11:59 P.M. on Wednesday, March 11 and ending at 7:59 A.M. on Thursday, March 12, 1953.

I would like to handle this case further if you will be agreeable to waive the provisions of paragraph (b) as there is no question of what we may have similar cases in the future and I believe I am right in the position I am taking and I likewise feel that you believe you are right. I would appreciate hearing from you on this and will grant my request." (Underscoring supplied.)

We replied on July 15, 1953:

"Acknowledgment is made of your letter of July 8, 1953, about conference in my office on June 18, in connection with claim that Paul J. Larsen be paid eight hours at pro rata rate on account of not being permitted to work the night of March 12, 1953.

While it is true, as you point out, that this claim was not appealed within the time limit set out in Rule 19, we are agreeable to granting your request that the provisions of paragraph (b) of that rule be waived in this case, with the understanding that this will not be considered a precedent in future cases. Accordingly, you may consider your claim on behalf of Mr. Larsen declined, and proceed to handle in accordance with the Railway Labor Act if that is what you desire to do."

If there is no question that we may have similar cases in the future, all concerned need your Board's decision on this one.

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 employee 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.

On March 11, 1953, claimant was regularly assigned as a car inspector, 12:00 midnight to 8:00 A.M. At 11:00 P.M. on March 11, one hour before his starting time, he telephoned Trainmaster E. Davis that he would be unable to work because his wife was in the hospital. On the following day, carrier not having heard from claimant, Car Inspector Taylor was directed to double over and work claimant's shift. Claimant appeared for work at 12:00 midnight and he was informed that he would not be permitted to work for failure to advise that he would report for duty. The claim is for eight hours pay which claimant lost because of this action of the carrier.

Claimant entered the service of the carrier as a carman on May 9, 1952. It appears that claimant had on several occasions been absent from work without giving notice and had also reported for duty without advising carrier in advance. On September 30, 1952, claimant was advised in writing to notify the Assistant General Car Foreman or the Yardmaster on duty when and for how long he would be off duty so that his intentions would be known.

It is the contention of claimant that when he notified Trainmaster Davis that he would not be able to report on March 11 that he stated he would work his position the next night. Trainmaster Davis positively denies that claimant made any such statement. Carrier concedes that if such advice

had been given that the Organization's position is correct. The question is therefore one of fact involving the credibility of claimant and Trainmaster Davis.

We are in no position to determine from the record before us which of the two men is to be believed. We are required therefore to deny the claim because of a failure to sustain the burden of proof. It does not appear probable, however, that carrier would require a car inspector to double over at the overtime rate if it had any reasonable information that claimant would work his assignment at the pro rata rate. Claimant's previous derelictions in this respect probably were considered when arrangements were made to have his assignment filled. It was proper for the carrier to give consideration to all such circumstances. The requirement of some notice is reasonable and claimant cannot properly complain of any injustice because of such requirement. The evidence is not sufficient to sustain the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1954.