

Award No. 2029
Docket No. 1880
2-CB&Q-EW-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David R. Douglass when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: (1) That under the current agreement the employes in the Telegraph Crew, of which Mr. J. L. Fryer was Foreman, were improperly denied three (3) hours compensation on March 29, 1954.

(2) That accordingly the Carrier be ordered to compensate the aforementioned employes in the amount of three (3) hours compensation for March 29, 1954.

EMPLOYEES' STATEMENT OF FACTS: On March 29, 1954, the employes of the telegraph crew, of which Mr. J. L. Fryer is foreman, were ready at the usual place to start the day's work. The regular starting time for the crew was 7:00 A. M. The crew reported at the usual place at 7:00 A. M., and was notified after 7:00 A. M. March 29, 1954, that they would not work on that day because of a snow storm, which is confirmed by statement of crew submitted herewith and identified as Exhibit "A".

The dispute was handled with carrier officials designated to handle such affairs, who all declined to adjust the matter.

The agreement effective March 1, 1952, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted that under Rule 41(a) reading:

"(a) When hourly-rated employes are required to report at the usual time and at the place for the beginning of the day's work, and because of inclement weather are notified at that time and place that work will not be required, they will be allowed a minimum of three (3) hours at pro rata rate. If held awaiting service or in the actual performance of service more than three (3) hours, actual time after the elapse of three (3) hours will be paid for on the minute basis."

When it is broken down into its component parts, Rule 41(a) manifestly will not support the payments herein requested. Moreover, when the case is considered apart from the rule, it is apparent there is no reasonable basis for this claim. The members of Line Gang No. 3 performed no work for the carrier on March 29, 1954. Moreover, they were not disadvantaged in any way. They were not required to leave their homes and travel to work, which it must be agreed was the reason for the insertion of this pay rule in the schedule. The claimants are hourly-rated employes who are accustomed to being paid only when work is performed. The fact that they did not work and collect a full day's pay on March 29, 1954 was not the fault of the carrier, but was admittedly because of the severe weather conditions. When all these factors are considered, apart from the rule, the inevitable conclusion is that the carrier should not be required to compensate claimants in these circumstances.

It has been conclusively established that the facts in this case fail to satisfy the three requirements of Rule 41(a). Claimants neither reported at the time for beginning work, nor at the place for beginning work, nor were they notified they would not work at that time and place. Under the agreement which must control this dispute, the Board has no alternative but to deny this claim in its entirety.

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 the dispute were given due notice of hearing thereon.

The facts of record indicate that the claimants were not notified until after 7:00 A. M., March 29, 1954, that they would not work that day.

The statement by Foreman Fryer said in part that "at approximately 10 minutes to 7 I went out and told them (the men) that there would be no work unless it slacked up." The words "unless it slacked up" had reference to the fact that it was snowing hard at the time Foreman Fryer made the statement to the men.

The Foreman's statement was not a positive statement of release. Instead, it was a contingent statement based upon a future condition. In other words, the men were required to stand by until 7:00 A. M. and the question of whether they would work then depended upon the weather condition at 7:00 A. M.

It is our opinion that the claim should be sustained by virtue of Rule 41 (a) inasmuch as the claimants were required to report at the usual time and place for the beginning of the day's work.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December, 1955.