

Award No. 2822
Docket No. 2668
2-CB&Q-EW-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO
(Electrical Workers—Communication Dept.)**

CHICAGO, BURLINGTON & QUINCY RAILROAD CO.

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, the employees who were not permitted to work in the Telegraph Crew, of which Mr. C. E. Happs was foreman, were improperly denied three (3) hours compensation on February 16th 1956.

2. That accordingly the carrier be ordered to compensate the employees who were not permitted to work in the amount of three hours compensation each, for February 16, 1956.

EMPLOYEES' STATEMENT OF FACTS: On February 16, 1956 the employees of the telegraph crew, of which Mr. C. E. Happs was foreman, were ready at the usual place to start the days work.

The regular starting time of the crew was 7 A.M. The crew reported at the usual place at 7 A.M. and were advised that they might not work on that day account of inclement weather. Of the eleven men assigned to the crew Foreman Happs worked four of them in the material car, the balance were then furloughed for the day which is supported by statement dated October 8, 1956, by the only two employees still employed by the carrier. (Exhibit A.)

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

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

POSITION OF EMPLOYEES: It is submitted that under Rule 41 "A", reading:

"(A) When hourly-rated employees are required to report at the usual time and at the place for the beginning of the day's work, and

This claim must be denied.

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 were given due notice of hearing thereon.

This dispute concerns the alleged violation of Rule 41 (a). In essence this rule requires that members of crews be notified prior to their starting time that service will not be required, and absent this notification, each crew member will be paid compensation for three (3) hours.

The issue to be resolved turns on a question of fact, that is, was the crew definitely notified prior to their eight o'clock starting time that no work would be performed on the date in question.

Two employes make a statement that at about 7:00 A.M. they were told that they "might not work." On the other hand, the record contains a statement by the foreman that he (foreman) advised the crew at 7:30 A.M. that no service would be performed.

A conditional statement concerning the probability of work performance would clearly place this dispute within the purview of Award 2029 and validate this claim. On the other hand, a positive statement that no work was to be performed would negate its (claim) value.

The starting time for the crew was 8:00 A.M. Even if the possibilities of work were discussed and considered on a "maybe" basis at 7:00 A.M., the positive and definite decision by the foreman at 7:30 A.M. that no work would be required was sufficient notice within the meaning of the rule.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 14th day of April, 1958.