

Award No. 3090

Docket No. 2841

2-FGE-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

RAILWAY EMPLOYEES' DEPARTMENT AFL-CIO (Carmen)

FRUIT GROWERS EXPRESS COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreement, the Carrier improperly and unjustly held Laborers G. M. Koromah and Robert Pierce out of service from April 12 through April 26, 1956.

2. That accordingly, the Carrier be ordered to compensate the aforesaid employees at their applicable straight time rate of pay for all time lost during the aforesaid period.

EMPLOYEES' STATEMENT OF FACTS: Laborers G. M. Koromah and Robert Pierce, hereinafter referred to as the claimants, are regularly employed by the carrier at Baltimore, Maryland by Fruit Growers Express Company, hereinafter referred to as the carrier.

On or about April 11, 1956 at approximately 3:40 P.M., the carrier's supervisor requested the claimants to work overtime. Claimants refused to work overtime, giving as their reason that they were tired and not physically able to work overtime. The work for which claimants were asked to perform on overtime was performed by other employees of the carrier.

At 3:50 P.M. on April 11, 1956 carrier's supervisor suspended the claimants from the service of the carrier. Subsequent to the claimant's suspension they received a notice from the carrier reading:

"You are hereby advised an investigation will be conducted at the Company Building, Locust Point, Baltimore, Maryland, Monday morning April 23rd, 1956, at eleven o'clock and you should arrange to be present to defend yourself of a charge of insubordination on afternoon of April 11, 1956, you may have representation of your choice."

The nature of the company's work at Baltimore is such that some overtime is necessary as the need for refrigerator cars to protect loadings demands. It is the company's policy to hold overtime to a minimum, and employees are not called upon to work overtime unless it is absolutely necessary to protect operations. Other of the company's laborers performed the overtime work necessary on April 11, 1956. The outright refusal of claimants to obey their supervisor's reasonable request led to the disciplinary action taken.

CONCLUSION

The claims herein are without merit and should be denied. The working rules agreement was not violated by the company. The discipline assessed by the company against the claimants herein was neither arbitrary nor capricious, and was not unduly harsh in view of the facts.

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 were given due notice of hearing thereon.

The claimants were suspended and held out of service from April 12 through April 26, 1956. An examination of the record does not disclose that the carrier acted arbitrarily in making a finding of insubordination and assessing a penalty therefor.

But we do find that the carrier violated Rule 27 providing, "No employee shall be disciplined without a fair hearing by a designated officer of the Company. Suspension in proper cases pending a hearing, which shall be **prompt**, shall not be deemed a violation of this rule".

We do not feel that the conduct of the claimants in this case called for a suspension pending a hearing; the date of the violation was April 11, the date of the hearing was April 23.

In view of the above the suspension should be sustained as to April 23, 24, 25 and 26. The claim of the organization should be sustained and the claimants should be compensated from April 12 through April 22.

AWARD

Claim sustained for April 12 through April 22, and compensation allowed for said dates at straight time. Otherwise the claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of January, 1959.