

Award No. 3673
Docket No. 3735
2-HB&T-EW-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Electrical Workers)**

HOUSTON BELT & TERMINAL RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1) That Electrician K. W. Posey was unjustly treated and the provisions of the current agreement were violated when he was suspended from service for the period of January 25 through February 12, 1959, inclusive.

2) That accordingly, the Houston Belt and Terminal Railway Company be ordered to compensate K. W. Posey for fifteen (15) days' time, January 25 - February 12, 1959 inclusive, in the amount he lost in wages during that period, due to suspension from service.

EMPLOYEES' STATEMENT OF FACTS: Mr. K. W. Posey, hereinafter referred to as the claimant, is employed as an electrician by the Houston Belt and Terminal Railway Company, hereinafter referred to as the carrier, at Houston, Texas, and is assigned to work on the first shift, 7:00 A. M. to 3:00 P. M., Sunday through Thursday, rest days Friday and Saturday. On Sunday, December 14, 1958, one of the regular work days of the claimant, he laid off work due to illness. His wife tried to call the claimant's supervisor shortly before 6:00 A. M. that morning to tell him the claimant would not report for duty that date because of illness; however, since no one answered the telephone at that time she called again about 7:20 A. M., at which time she spoke to Electrical Supervisor B. R. Blalock, and advised him that her husband was sick and would not report for work that day.

The claimant returned to work the next day, December 15, 1958, and was subsequently notified by Car Foreman Mr. W. L. Nicks, in his letter of December 16, 1958 to appear in the office of the master mechanic at 3:00 P. M. December 22, 1958, for formal investigation. Local Chairman Mr. K. S. Pengelly, wrote Mr. Nicks under date of December 20, 1958, and requested a postponement. Postponement was granted by the carrier as outlined in Mr.

and "about 7:20 A. M." And certainly neither claimant nor any of his representatives has so much as attempted to establish any such excuse!

It should be constantly borne in mind that, while normally the burden of proof in a discipline case may rest on carrier, here the burden of proving full compliance with Rule 16(d) largely is on claimant; since there is no disputing the fact that he had a regular assignment due to go to work at 7:00 A. M. Sunday December 14 and failed to protect it, burden was on him to establish that he had first obtained permission from his foreman to be absent or that he was prevented from getting to work by sickness or other good cause of which his foreman was promptly advised. Yet here, as in the case of August 7, 1958 (Docket 3528) the claimant seemed to assume no responsibility whatsoever for protecting his assignment, but on the other hand appeared to take the untenable position that here was a position which he could work or not work at his option, staying home if he so elected, with no need for giving any reason or giving his employer any opportunity to arrange for a substitute.

It is the carrier's position that not only it, but no other business dealing in service, could hope to operate under any such conditions. It was for this reason that claimant, having been found in violation of Rule 16(d), was kept out of the service five days in the violation of August 4, 1958, and fifteen days in the case of the present violation, as well as in one immediately thereafter, in the hope that this employe, whose work record was not otherwise a good one, could be persuaded that there was some responsibility on his part to fill his assignment punctually and adequately, a hope which, as is indicated in the carrier's letter to General Chairman Muschietty dated September 22 may have been justified.

The substance of all data submitted herein and herewith has been presented to the representatives of the organization and made a part of the particular question in dispute.

The carrier, convinced that transcript in this case so clearly persuades that the discipline assessed was unduly light, requests that you deny the claim in its entirety and sees no need for, and therefore requests no oral hearing.

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 withing 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.

Claimant is employed as an Electrician by the Carrier and is assigned to work on the first shift, 7 A. M. to 3 P. M., Sunday through Thursday, rest days Friday and Saturday.

On Sunday - December 14, 1958, the claimant failed to appear for work. It is the contention of the Carrier that he did not first obtain permission to be absent as required, or that he was prevented by sickness or other good cause of which his foreman was promptly advised. Investigation was held as re-

quired by the Agreement, and claimant was suspended for 15 days, without pay to wit; January 25 through February 12, 1959.

Rule 16 (d) of the current Agreement reads as follows:

“(d) Employees shall not lay off without first obtaining permission from their foremen to do so, except in cases of sickness or other good cause, of which the foremen shall be promptly advised.”

The claimant testifies that he was sick on the morning of December 14, 1958. That his wife commenced calling Mr. Blalock the electrical supervisor around 6 A. M., and that 7:20 A. M., Mrs. Posey informed Supervisor Blalock that her husband was laying off on that date on account of being sick. Supervisor Blalock did not arrive at work until around 6:45 A. M. Part of the time he was in the office, but most of the time outside the office and did not hear the telephone ring until 7:20 A. M., when he received the call from Mrs. Posey that her husband was sick.

Claimant stated that he was sick on the morning of December 14, 1958; and there is no evidence to contradict his testimony. Posey through his wife tried to contact Supervisor Blalock, and she notified him by telephone at 7:20 A. M., which was the earliest time that she could reach him. Thus there was no violation of the Agreement and claimant is entitled under Rule 29 to be compensated for wages lost during the suspension.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1961.