

**Award No. 3674**

**Docket No. 3736**

**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 EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Electrical Workers)**

**HOUSTON BELT & TERMINAL RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:**

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 February 15th through March 5th, 1959, inclusive.

2. That accordingly, the Houston Belt and Terminal Railway Company be ordered to compensate K. W. Posey for fifteen (15) days' time, February 15th - March 5th, 1959, inclusive, in the amount he lost in wages during that period, due to suspension from service.

**EMPLOYES' STATEMENT OF FACTS:** 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.

About 5:45 A. M., December 16, 1958, one of the regular work days of the claimant, he called Mr. W. P. Pettus, coach foreman, and advised him that he was sick and could not report for work. The claimant asked Mr. Pettus to notify Mr. Blalock, the electrical supervisor, that he would not be in that day and Mr. Pettus assured the claimant he would write it in the turnover book and give Mr. Blalock the message. The claimant returned to work the next day, December 17, 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 23, 1958 for formal investigation. Local Chairman 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. Nicks' reply of December 22, 1958 and under date of

replacement. This Posey did not do in this case and the only excuse I can conceive of for such failure would have been that the incapacitating illness struck him at 5:45 a.m. and that he made an attempt to call his supervisor — he made no such contentions during the investigation”.

As stated to Mr. Muschietty during the conference September 21, the three disciplinary steps taken, of which this was the third, apparently had a corrective effect, since it then appeared that claimant could be depended upon to protect his job, while prior thereto he seemed to have the idea that he could use his own pleasure as to whether or not to come to work. General Car Foreman Nicks, in that conference, pointed out to Mr. Muscietty what certainly he and your Board must be well aware of that failure of a regular employe to protect his assignment invariably affected the performance of our work unless sufficient advance notice was received to permit necessary arrangements — and those “necessary arrangements” are often costly.

**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 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 December 16, 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 required by the Agreement and claimant was suspended for 15 days, without pay, to wit: February 15 to March 5, 1959.

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

“(d) Employes 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 testified that he was sick on the morning of December 16, 1958, that at 5:45 A. M., he called Foreman Pettus and informed him that he was sick, and would he inform Supervisor Blalock, that he was laying off and to write it in the turnover book. Carrier contends among other things, that Posey — should have notified Supervisor Blalock, but Blalock did not arrive at work until between 6:45 A. M. and 7 A. M. when Blalock arrived he found from the turnover book, that Posey would be off for work on that day — so Blalock had notice upon his arrival at work.

Claimant states that he was sick on the morning of December 16, 1958, and there is no evidence to contradict his testimony. Posey at 5:45 A. M.

called Foreman Pettus that he was sick and would be absent from work, for Pettus to notify Supervisor Blalock, and to write it in the turnover book, which he did. Thus notice was given, as early as possible.

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.