

Award No. 4409

Docket No. 4368

2-A&S-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee P. M. Williams when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 131, RAILWAY EMPLOYEES'
DEPARTMENT, A.F. of L. — C. I. O. (Carmen)**

ALTON AND SOUTHERN RAILROAD

DISPUTE: CLAIM OF EMPLOYEES: 1. That the Carrier improperly denied Carman George Burrow the right to work his regular position 3:59 P. M. to 11:59 P. M. October 11, 1961.

2. That accordingly, the Carrier be ordered to compensate Carman Burrow in the amount of eight hours at the straight time rate for this day.

EMPLOYEES' STATEMENT OF FACTS: Carman George Burrow, hereinafter referred to as the claimant, is assigned to the 3:59 P. M. to 11:59 P. M. shift in Davis Yard by the Alton and Southern Railroad Company, hereinafter referred to as the carrier.

The Claimant became sick on October 9, 1961 and was unable to report to work. His wife called the general foreman's office but was unable to get anyone to answer the phone so she called the yardmaster and advised him that the claimant could not report to work that day. The next day, October 10, 1961, the claimant was still sick so he had his wife call Assistant General Car Foreman White to report that he would not be in to work that day, but would report the following day.

Assistant General Car Foreman White advised the claimant's wife that he was marking the claimant off-plus. She then advised that he did not wish to be marked off-plus, but intended to report to work the following day. Mr. White then advised her to have the claimant call him about 1:30 P. M. the following day. The call was made about 12:30 P. M., but Mr. White advised that the claimant could not report to work that day.

This dispute has been handled with the carrier officials up to and including the highest officer so designated by the company, with the result he has declined to adjust it.

The agreement effective January 29, 1947, as subsequently amended, is controlling.

work a day in advance is one of long standing and one that is fully understood by the employees. The practice is one that is obviously necessary because of the manner in which this carrier is forced to fill such vacancies. Furthermore, Mrs. Burrow, acting as Mr. Burrow's agent, was informed that Mr. Burrow would be maked off indefinitely, and apparently understood this as indicated by her conversation with Mr. White.

If the arrangement made by Mrs. Burrow and Mr. White did not meet with Mr. Burrow's approval he certainly could have called Mr. White and told him that there would be no necessity for marking him off indefinitely, because he would be to work the following day, October 11. This may very well have been the action that would have avoided this claim.

It is this carrier's position, that in the light of all the circumstances involved, and particularly in view of a practice of long standing which requires employes to give a day's advance notice before returning to work after an indefinite absence, Mr. Burrow's claim is without merit and respectfully request your Board to decline it.

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 respectfully 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.

Parties to said dispute waived right of appearance at hearing thereon.

The claimant, Carman George Burrow, has been employed by the carrier since May 9, 1946. On October 9, 1961 claimant was assigned to the 3:59 P. M. to 11:59 P. M. shift. Due to sickness the claimant was unable to work and had his wife call the yardmaster to report his inability to work. The carrier doubled over an employe from another shift to cover claimant's position. On October 10, 1961 claimant's wife called the General Foreman's office to report that her husband was again unable to report for work and she could not say if he would be able to report for work the following day. The record discloses some contradictory statements in what was said in the telephone conversation between claimant's wife and Assistant General Foreman White and since, from this record, we cannot determine which story should be given the greater credence, we will not give weight to either, insofar as it is contradicted.

The claim of the organization is for a day's pay for George Burrow; it alleges that the carrier improperly denied him his right to work his regular position on October 11, 1961.

The uncontroverted facts show that claimant was sick and unable to work on October 9; that on October 10 he was still unable to work and he was not sure he would be at work on October 11 and further, that it was approximately 12:30 P. M., October 11 before he notified the carrier that he would report for work on his regular assignment. At that time he was advised he could not be used on October 11 but that he should report for work on October 12. The carrier asserts that its long standing practice has been to require employes who are off for an indefinite period to give 24 hours advance notice of their intent to return to work, thereby allowing the carrier to re-adjust its working force.

Award No. 1792 of June 30, 1954 was between these same parties and was based on facts which occurred on March 11, 1953. The facts of Award No. 1792 are almost identical to the instant case and substantiate the allegation of the carrier that its long standing practice has been to require 24 hours advance notice before an employee could report to work after an indefinite absence.

In view of the nature of the carrier's operation we do not believe that its practice of requiring 24 hours advance notice is unreasonable and claimant cannot properly complain of any injustice because of such requirement. The claim should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of February, 1964.