

**Award No. 4455**

**Docket No. 4097**

**2-RDG-CM-'64**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

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

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 109, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

**READING COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That under the current agreement, Coach Cleaner Julia McGuigan, was discriminated against when denied the right to work her regular assignment on May 26, 1960.
2. That accordingly the Carrier be ordered to compensate her for the 8 hours' pay lost as the result thereof.

**EMPLOYEES' STATEMENT OF FACTS:** Coach Cleaner Julia McGuigan, hereinafter referred to as the claimant, was regularly employed at Huntingdon Street Car Shop, Philadelphia, Pennsylvania, tour of duty 8:00 A. M. to 4:00 P. M., Monday through Friday, rest days Saturday and Sunday.

On Tuesday, May 24, 1960, claimant, for personal reasons, reported off duty for that day and again on Wednesday, May 25, 1960, claimant again reported off duty for that day; both times claimant reported off prior to the starting time of her shift.

Upon reporting for duty, prior to her regular starting time on Thursday, May 26, 1960, the claimant was denied the right to work her regular assignment, thereby losing 8 hours' pay.

This dispute has been handled with the carrier up to and including the highest officer designated to handle disputes of this nature, with the result that he has declined to adjust it.

The agreement effective January 16, 1940, as it has been subsequently amended, is controlling.

**POSITION OF EMPLOYEES:** It is submitted that the claimant is subject to be compensated for the time she was improperly held out of service

tion of the organization and submits that the facts in this particular claim certainly do not support the contention of the organization that claimant was discriminated against. Claimant was not off duty with permission, but merely marked off duty and on both May 24 and May 25, 1960, she reported off in insufficient time to provide properly for necessary relief. Carrier was successful in filling the vacancy on May 25th and it waited until 4:00 P. M., May 25th, at which time it had still not heard from claimant before advising the relief employe to report on the 26th of May. Certainly, any employe has the responsibility of reporting for work except for good cause and when any employe has been off duty, even with permission of carrier, they have to work as of a particular date or time. Carrier, with over 10,000 employes, obviously cannot be charged with the responsibility of contacting employes, obviously cannot be charged with the responsibility of contacting employes off duty to determine their intent to return, as a policing task of this nature would be completely onerous, burdensome and wholly unrealistic. Under the facts and circumstances present in this docket, carrier maintains its local supervision properly held claimant from the coach cleaner's position on May 26, 1960, and filled same with the furloughed employe.

In the handling of this matter on the property, the organization referred to Rule 22 of the schedule agreement, which reads as follows:

**"RULE 22. REPORTING OFF**

"In case an employe is unavoidably kept from work he will not be discriminated against. An employe detained from work on account of sickness or for any other good causes shall notify his foreman as early as possible. When known, employes are expected to make advance arrangements if necessary to be absent."

Carrier submits that the above quoted rule does not support the claim of the organization for 8 hours' pay for the claimant for time not worked. In this case, it does not appear whether claimant was avoidably or unavoidably kept from work. She merely called her foreman and marked off duty. She did not call until about 45 minutes prior to the start of her tour of duty on both dates. This fact certainly does not appear to be in compliance with express provisions of Rule 22, and no reason was advanced in the handling of this matter on the property to justify or explain the short notice given by Mrs. McGuigan. Further, the record in the case is clear that there were no advance arrangements made for the absenteeism. Carrier reiterates that Rule 22 does not support the claim for penalty pay.

Under all the facts and circumstances present in this docket, carrier submits that the claim of the organization is not supported by any rule in the collective bargaining agreement and in the absence of rule support must necessarily be denied in its entirety by the Board in the proper exercise of its statutory functions.

**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 the employe within the meaning of the Railway Labor Act as approved June 21, 1954.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

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

Claimant is a coach cleaner at Carrier's Huntington Street Car Shop, Philadelphia, Pa., hours of duty from 8:00 A. M. to 4:00 P. M.

On May 24, 1960, and again on May 25, Claimant called her foreman at 7:15 A. M. and reported herself off duty. Her position was not filled on the 24th, but was filled by a furloughed employe on May 25th.

Claimant appeared for duty on May 26, 1960 and was informed that her position was filled for that day, and she was not permitted to work on the 26th.

Rule 22 of the controlling agreement reads as follows:

"In case an employe is unavoidably kept from work he will not be discriminated against. An employe detained from work on account of sickness or for any other good cause shall notify his foreman as early as possible. When known, employes are expected to make advance arrangements if necessary to be absent."

The reasons for Claimant's absences do not appear in this record, but she did report off prior to the beginning of her shift, and was in compliance with the Rule.

It is Carrier's position that it had no knowledge that she would report for duty on the 26th, and therefore it had made other arrangements to fill her position on that day.

Carrier asserts that the right to report off carries a corresponding duty for the employe to make known to the Carrier when the employe is going to return to work. This is a logical thesis, but it finds no support in the Rules. The import of the Rules is that unless the employe reports off, he or she is expected to be at work. Claimant reported on the 26th, and was wrongfully deprived of that day's work.

#### AWARD

Claim 1: Sustained.

Claim 2: Sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1964.