

Award No. 6263
Docket No. 6110
2-NOPB-CM-'72

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)

NEW ORLEANS PUBLIC BELT RAILROAD

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current applicable agreement, Carman J. P. Marcev, Jr., employed by the New Orleans Public Belt Railroad is entitled to compensation for eight (8) hours at the time and one-half rate of pay for February 23, 1970, which was a holiday, for service he would have performed had he been called properly.

2. That accordingly, the New Orleans Public Belt Railroad be ordered to compensate Carman Marcev for eight (8) hours at the time and one-half rate of pay for said violation.

3. That accordingly, in addition to the money amounts claimed herein, the New Orleans Public Belt Railroad be ordered to compensate Carman Marcev an additional amount of 6% per annum compounded annually on the anniversary date of February 23, 1970.

EMPLOYEES' STATEMENT OF FACTS: Carman Marcev, hereinafter referred to as the claimant, was temporarily assigned to Carman-Inspector J. A. Limberg's assignment under Bulletin No. A-65, under date of February 2, 1970, issued by New Orleans Public Belt Railroad's Master Car Builder, Mr. J. R. Coates, account no bidders for the position. The New Orleans Public Belt Railroad is hereinafter referred to as the carrier.

On February 20, 1970, Carman-Inspector J. A. Limberg called the Carrier's Car Department Office to report that he could return to his assignment on February 23, 1970, at that time Mr. Limberg was notified he would have to have a release from his physician, present this release to the carrier's claim agent and together with release from his physician and letter from claim agent report to carrier's physician for an examination, if found physically fit for duty by carrier's physician, report back to Claim Agent for letter to return to duty.

Mr. Limberg did not have a letter of release from his physician on Friday, February 20, 1970, nor could he obtain one before Tuesday, February 24, 1970,

Saturday or Holiday's no one bothered to notify Mr. Marcev to report on Mr. Limberg's assignment February 23, 1970. Mr. Marcev, worked Mr. Limberg's assignment on Saturday February 21, 1970 from 3 to 11 P. M."

The facts are that Mr. Coates was well aware of what had transpired in the conversation between Mr. Marcev and Mr. Henningsen on February 20th, because he was apprised of the situation in telephone conversation with Mr. Henningsen on February 20th and he returned to work on February 21, 1970. It is obvious that Mr. Coates would not have called Carman Marcev's residence, if Carman Limberg was supposed to be working on the night of February 23rd.

The Claimant in this dispute would not be entitled to the time and one-half rate of pay even if this claim were valid, which carrier denies, inasmuch as he performed no service for this carrier on the date in question. In addition, there is no basis for 6% interest, as claimed.

In view of the foregoing, carrier respectfully requests your Honorable Board to decline this claim.

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.

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

The record herein is replete with allegations, but not probative facts. The net result would indicate confusion, rather than a fact-pattern upon which we can rely to reach a proper determination of this dispute.

The Petitioner alleges that the Claimant was "instructed" not to report to work on February 23, 1970 because the employe he was replacing would probably be back to work. The Carrier contends that Claimant was alerted by his foreman to the effect that the man he was replacing might be back ready to resume his position and therefore he, (the claimant) might not be needed on February 23, 1970 at 11:00 P. M. The Claimant did not appear for work on February 23, 1970 and the Carman who worked the previous shift carried over, protecting the work, and received premium pay therefor.

As indicated above, the record before us does not afford us a basis upon which to resolve questions of fact. The Petitioner avers in its rebuttal that employes were discontent with the manner in which the Carrier dealt with employes filling temporary vacancies when the regularly assigned worker returned to his position. The Carrier indicates that, in fairness to Claimant, the foreman alerted him to the possibility that the man he was replacing might be back to work on February 23.

The agreement of June 30, 1967, cited by the Petitioner contains the following requirements: "When Carman are filling vacancies, * * * they will remain on the assignment until the regular assigned employe returns * * *."

Pursuant to this provision, was it the obligation of the Claimant to ascertain whether the regular assigned employe was actually coming back to work on February 23, or was the onus on management to advise the Claimant that the returning employe had not complied with Carrier's requirements in time to be permitted to resume his regular assignment on February 23, 1970? The Master Car Builder apparently believed that the Claimant was expected to work on February 23 and made an effort to reach him by phone after 11:00 P.M. that night in an effort to have him come to work. Claimant did not receive the calls and reported for work at his own position at 7:00 A.M., February 24, 1970. There is nothing in the record to show that Claimant's failure to report to work on February 23 resulted in any negative comment on the part of supervision. But we cannot find that this, standing by itself, constitutes affirmative, positive proof, as urged by the Petitioner, of Claimant's version of his conversation with the Shop Foreman on February 20.

A further factor which we must consider is the uncontroverted statement by the Carrier that had the claimant worked on February 23, 1970, he would have been off on his rest day on Tuesday, February 24. Having worked on February 24, he suffered no loss of straight time earnings.

We can only conclude that there was a great deal of confusion and misunderstanding stemming from the proffer of resumption of work by the regularly assigned employe just before a holiday week-end and we do not find a basis for imposing a penalty upon the Carrier under the above related circumstances as called from this record. See Awards 5891, 5350, 5948, 5980, 6080, 6082, 6122.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 13th day of March 1972.