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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6353
Docket No. 6212
2-HB&T-CM-'72

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. 2, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Houston Belt & Terminal Railway Company

Dispute: Claim of Employees:

1. That Carman J. E. McCain was unjustly dealt with when he was dismissed from the service of the Houston Belt & Terminal Railway Company December 22, 1970, and never afforded the benefit of an investigation as provided for in Rule 29.
2. That accordingly, the Houston Belt & Terminal Railway Company be ordered to compensate Carman McCain in the amount of eight hours (8') per day at the pro rata rate covering the dates of December 23, 24, 25 (Christmas Day), 27, 28, 29, 30, 31, 1970 and January 1, 1971 (New Year's Day), or a total of nine (9) days (7 work days and 2 holidays) and in addition to the money amounts claimed herein, the Carrier shall pay Claimant an additional amount of 6% per annum compounded annually on the anniversary date of the 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 employee or employees involved in this dispute are respectively carrier and employee 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.

This is definitely a case which should have been settled on the property. The grievance procedure was instituted to afford an honest interchange between the parties and prompt resolution of their differences. As shown below, the extensive correspondence and the eventual submission to this Board constituted an abuse of the process.

Item 1 of this claim was settled when Carrier, on December 23, 1970, recinded its removal of Claimant from service and therefore, this matter is moot.

As to Item 2 of the Claim, it is impossible to believe that Petitioner and Claimant are unmindful or unaware of the basic concepts applicable to restitution for lost time. No employee is entitled to back pay when his employer has made a reasonable effort to avoid loss of earnings upon discovery of an error. It is the obligation of the aggrieved worker to mitigate damages. He may not sit back and allow losses to accrue and take no steps to arrest same.

The record uncontrovertedly shows that Carrier promptly ascertained that action taken against Claimant on December 22, 1970 was erroneous. Prior to Claimant's regular starting time on December 23, 1970, it reached his home by phone and advised his wife that he was restored to service and that he should report to work immediately. He did not come to work that night. The morning of December 24, 1970, Carrier contacted the General Chairman of the Petitioner, advised him of the circumstances and urged him to get Claimant back to work that night. This was confirmed by letter of that date to the General Chairman. The record indicates that the Organization did not seek to contact Claimant until December 29 and found through his wife that he was out of town. Even on December 30, at a conference attended by representatives of the Carrier and the Organization, at which, according to Carrier and not denied, Claimant was present, he refused to commence working immediately but decided to make himself unavailable for several more days.

Carrier did all it was obligated to do to rectify an error. We will not compensate an employee for his pique because of an admitted mistake of his Employer.

Claimant's lost time on December 22 and December 23, when notice of recall was shortly before reporting time, are all that may be considered validly the responsibility of the Carrier.

Thus, two days pay for time lost is all Claimant is entitled to receive, the remaining lost time being due to Claimant making himself unavailable for work.

A W A R D

Claim 1. Dismissed.

Claim 2. Sustained to the extent and in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killeen
Executive Secretary

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