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NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 6435  
Docket No. 6295  
2-SCL-CM-'73

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

Parties to Dispute: ( System Federation No. 42, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
(  
( Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That under the provisions of the current agreement, Carman W. T. Gibson, was improperly denied compensation for May 17 and 18, 1971.
2. That accordingly the Carrier be ordered to pay the aforesaid employee the difference between what he received for jury duty these days, and what he would have received on his regular assigned position in accord with mediation agreement September 2, 1969, Article 3.

( 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.

Claimant, a carman, was on jury duty May 17 and May 18. Under ordinary circumstances, he would have received his regular pay less the amount paid to him for jury duty. On May 17 and on May 18, the Signalmen were on strike and had placed pickets at shop entrances where claimant was employed. No other carmen at the shop crossed the picket line on May 17 and 18.

The Organization claims pay for claimant for the two days in dispute pursuant to Article III of September 2, 1969, Mediation Agreement, in effect at the time.

( The Carrier refused to pay for the two days. It argued that claimant would not have actually lost time as required under "Jury Duty", Article III of the Mediation Agreement, because he would not have crossed the picket line to work.

Carrier claims that the Organization's traveling representative had stated during the strike that, "We would not expect our members to cross picket lines at the peril of life and limb." This has not been denied in the Employees' Rebuttal.

We are not stating a personal opinion in recognizing that claimant would not have "scabbed" to cross a picket line being observed by his brother carmen and his Organization. The history of the Trade Union Movement bears this out. It is well set forth in Second Division Award No. 4494, and recognized in Third Division Award No. 18715. The petition does not set forth any proof to the contrary.

That claimant was off duty because of his Jury Duty, does not automatically prove that he had actually lost time and pay from his regular work under these facts. No claim is made that this employe would have crossed the picket line to work on May 17 and on May 18, if he was not on jury duty.

A W A R D

Claim Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

E. A. Killeen  
Executive Secretary

Dated at Chicago, Illinois, this 11th day of January, 1973.