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Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 6567
SECOND DIVISION Docket No. 6413
2-REA-MA-'73

The Second Division consisted of the regular members and in addition Referee Edmund W. Schedler, Jr. when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(REA Express, Inc.

Dispute: Claim of Employes:

(a) That under the current Agreement, echanics L. W. Ford, O. Herrington, W. K. Fullmer, O. G. James and R. A. Hammett were unjustly suspended from service twenty (20) working days each, during the period October 5, 1971 to November 1, 1971, in addition to certain additional days the claimants were held out of service prior to their investigation, which was held on October 8, 1971.

(b) That accordingly, the Company be ordered to compensate each of the above claimants eight (8) hours pay at the applicable hourly rate for each day the claimants were improperly withheld or suspended from service subsequent to October 1, 1971, and that,

(c) Each claimant be made whole in all conditions of the applicable agreement, i.e. qualifying for vacation, health and welfare coverage under Travelers Group Policy No. GA-23000, no loss of seniority and their records be cleared of such unjust suspension.

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.

This disciplinary dispute arose over the Claimants' leaving the job on or about Friday October 1, 1972. The evidence disclosed that pay day occurred on the date in question and Company did not pay the Claimants on that day. On Friday the Company did say the employees would receive a "pay bill" the following Monday. The following provisions of the Agreement were relevant to this dispute:

"Rule 8. All employes will be paid weekly. The work week for payroll purposes shall be Monday through Sunday, with pay day to be the following Friday. When a holiday occurs on Friday, the pay day will be Thursday."

"Rule 28. Detained from Work. In case an employee is unavoidably kept from work he will not be discriminated against. An employe detained from work on account of sickness, or from any other good cause, shall notify his foreman as early as possible. Three days' absence without notice shall be deemed sufficient cause for dismissal, providing employe fails to show satisfactory for such absence."

"Rule 37. Prior to the assertion of grievances as herein provided, and while questions of grievances are pending, there will neither be a shut down by the employer nor a suspension of work by the employes."

It appears to this Board the Company either negligently or deliberately failed to send the time cards in properly and the Claimants were not paid on time. The Board notes that in the transcript the Company witnesses did not refute Claimant Ford's testimony on page 3 relating to the time cards. The Board also notes that Company witness Liedel did not refute Claimant Ford's testimony that Liedel, when notified that the employees wanted to go home, threw up his hands and said, "Well let them go home."

As a practical matter the grievance procedure is not an appropriate remedy for employees whose pay is delayed. The grocery man does not understand it when a Claimant tells him that he cannot pay for his groceries because his pay is tied up in the grievance procedure. The only practical remedy is for the men to be excused from work in order to make other financial arrangements for the weekend. The evidence did not show that the Company clearly communicated to the employees that their jobs were in jeopardy if they left work, and it appears that a supervisor after being pursued on an error did excuse the employees in an off handed manner. In the opinion of this Board there were mitigating circumstances to the absences on October 1, 1972.

The agreement under rule 35 (f) states "the employe shall be reinstated and paid for time lost." In the opinion of this Board "paid for time lost" is the hourly cost for purchasing the employe's labor that the Company would sustain if the employe worked. This cost includes vacations and health and welfare insurance benefits.

A W A R D

The grievance is sustained.

1. The Company will immediately offer to pay claimants O. Herrington, R. A. Hammett, W. K. Fulmer, L. W. Ford, and O. G. Jones at their applicable rate of pay for 8 hours per day for 20 days suspension plus the days they were held out of work prior to the investigation.

2. The Company will offer to make each Claimant whole in qualifying for vacation, health welfare insurance coverage, restore each Claimant to seniority positions they held prior to their suspension and expunge from each Claimant's personnel record this suspension.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By: Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 23rd day of July, 1973.