

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: ( Railway Employees' Department  
( A. F. of L. - C. I. O.  
( (Carmen)  
(  
( Pacific Fruit Express Company

Dispute: Claim of Employees:

1. That the Carrier violated the controlling Agreement when it deprived Carman Ruben W. Robles of five (5 ) hours' time, or the equivalent of \$29.00 in wages, by improperly altering his time card after the end of his work shift under date of April 8, 1975.
2. That accordingly, the Carrier be ordered to compensate Carman Robles for his wage loss as set forth in the original claim by the Local Chairman, which is attached hereto as Exhibit "A".

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.

The Claimant, Mr. R. Robles, is a regularly assigned Carman in the Carrier's Car Repair Shop at Tucson, Arizona. Mr. Robles is Chairman of the Local Protective Board. On April 8, 1975, he punched his time card in at 7:30 A.M. and out at 4:31 P.M. The time his card noted that the Claimant was charged out for Union Business at 8:00 A.M. and returned at 1:30 P.M. The Claimant was paid for the three hours worked, as ultimately designated on the time card. Mr. Robles in his June 23, 1975 letter to the Superintendent of the M & E Department stated in part:

"In paragraph five you should have also quoted Rule 36(a) which reads '(a) Employees subject to this agreement who

"'believe they have been unjustly dealt with or that provisions of the agreement have been misapplied shall have the right to submit the facts to their foreman for adjustment and/or the duly authorized Local Committee....', which would have supported my reasons for conducting Union Business on April 8, 1975. There were several matters handled to a conclusion on this day before they had turned into major incidents.

In paragraph six of your letter you state that I was not in conference with management but that I was 'In fact conducting Union Business involving claims, etc.', which is correct, for claims occurring on the company property are either caused by you, yourself, Mr. Stedman or by one of your supervisory staff, not by myself or by the members that I represent. Also...."

The Organization contends that the action by the Carrier in noting the Claimant out at 8:00 A.M. and in at 1:30 P.M. was a violation of Rule 37(a) of the Agreement which states in pertinent part:

"No employee shall be disciplined or dismissed without a fair hearing by a designated Officer of the Company."

The Organization insists that the Carrier withheld a part of this employee's wages without a fair hearing which is a form of discipline.

This Board is limited to specific facts and circumstances of each case before it. While the Organization may have made out a case under slightly different facts, it clearly has not done so in the instant case. The Claimant admits that he was not in conference with Management and that he was in fact conducting Union business. No rule of the Agreement guarantees an employee the right to eight hours pay simply because the employee happened to punch in at the start of the shift and punch out at the end of the shift. We find that the Carrier performed a legitimate time keeping function under the narrow circumstances of this case. We find that this time keeping function was not an act of discipline under the narrow circumstances of the instant case. If the Claimant desired to contend that the time spent away from his regular duties was compensable under Rule 36(a) and (d), the proper procedure to follow should have been to file a claim under the Grievance Procedure as set forth in Rule 36, presenting proofs and argument in support of this theory. Such is not the theory of the claim before this Board, and we are therefore compelled to deny this claim.

A W A R D


Claim denied.

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Award No. 7317  
Docket No. 7167  
2-PFE-CM-'77

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 5th day of July, 1977.

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