Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7551
SECOND DIVISION Docket No. 7412
2-SCL-CM-'78

The Second Division consisted of the regular members and in addition Referee Theodore H. O'Brien when award was rendered.

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

Dispute: Claim of Employes:

1. That the Seaboard Coast Line Railroad Company unjustly denied Mr. D. L. Florer his contractual right to work his regular assigned position on February 19, 1975.

2. That accordingly the Carrier be ordered to compensate him for six and one-half ($6\frac{1}{2}$) hours at pro rata rate of pay.

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.

Claimant is regularly employed by the Carrier at Tampa, Florida. On February 19, 1975, Claimant was assigned to the 3:00 P.M. to 11:00 P.M. over-the-road truck assignment. However, he did not report for work until 4:30 P.M., one and one-half hours late. Upon his arrival at his work location, he was informed by his Foreman that his position had been filled by another employe and thus, he was not allowed to work.

The Petitioner alleges that Claimant was late due to his car breaking down on Highway 301, north of Tampa, at a point where it was impossible for him to summon aid or to call his Foreman and report that he would be late. The petitioning Organization also contends that the Carrier violated Rule 15 - Seniority and Filling New Jobs and Vacancies; Rule No. 1 - Hours of Service; and Rule No. 32 - Discipline Hearings, of the controlling Agreement. It is the Organization's position that the Claimant held seniority rights to his regular assignment under Rule No. 1 and Rule No. 15 of the Agreement, and that Carrier's refusal to allow Claimant to work his position on February 19,

1975 constituted discipline improperly administered in violation of Rule 32 of the Agreement.

The Carrier contends that the Claimant violated Rule 19 of the applicable Agreement. Rule 19 reads as follows:

> "In case an employee is unavoidable kept from work he will not be discriminated against. An employee detained from work on account of sickness or for any other good cause shall notify his foreman as early as possible."

It is the Carrier's position that Claimant was not discriminated against, but treated just as other employees in similar circumstances would be treated, i.e., when he failed to report for his work assignment at 3:00 P.M., Carrier waited approximately thirty minutes, at which time Carrier called another employee to protect this assignment. The Carrier contends that they have not violated the Agreement and that no provision of the Agreement requires Carrier to pay Claimant when he failed to properly protect his assignment. It is asserted by the Carrier that the Organization has submitted no proof that Claimant experienced any car trouble. They also aver that Highway 301 north of Tampa is a very heavily travelled highway with numerous houses and businesses located thereon. Thus, the Carrier disagrees with the Organization's contention that the Claimant was unable to call in and thus comply with Rule 19 of the controlling Agreement.

It is the opinion of the Board that the Organization has shown no evidence that a rule exists in the applicable Agreement which requires the Carrier to permit an employe to work when he reports for his assignment late. This issue was decided in Second Division Award No. 7384, which Award held, in pertinent part, as follows:

> "Having reported late without advance notification, the Claimant is in a tenuous position to demand, as a rights, assignment to part of his assigned shift. The Carrier's action did not constitute discipline. The Organization has failed to show any rule violation."

See also Second Division Award No. 7355 and Award No. 4150.

Moreover, the Organization has asserted that the Claimant was unavoidably detained from reporting for work at his regular starting time due to good cause. However, they have produced no evidence whatsoever to support this contention. It is a well established principle that the burden of proof rests with the petitioning Organization, and that mere assertions will not serve as proof. The Organization, in the instant claim, has not met it's burden of proof. The Organization has not produced any evidence of probative value that the Claimant had, in fact, experienced car trouble on a desolate stretch of Highway 301, and that he was unable to reach a telephone and call his Foreman

and inform him that he would be delayed in reporting for his assignment. It is the Claimant's contractual repsonsibility to protect his assignment by notifying the Carrier, as early as possible, if he is detained from work for good cause, in compliance with Rule 19 of the controlling Agreement. There is simply no evidence that he was unavoidably kept from work as he contends. The Organization has not established that the Carrier has violated the applicable Agreement. Furthermore, Claimant was not disciplined as that term is used in this industry, and thus, Rule 32 has no application to the claim at hand. Nor is there any evidence that the Claimant was discriminated against as asserted by the Organization. Therefore, the claim must be denied.

A W A R D

Claim denied.

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 16th day of June, 1978.