

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (System Federation No. 22, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(St. Louis-San Francisco Railway Company

Dispute: Claim of Employees:

1. That the St. Louis-San Francisco Railway Company unjustly deprived Upgraded Apprentice T. J. Callaway, Memphis, Tennessee, of his right to work on October 10, 1976, when he was sent home by the foreman for allegedly not reporting for work.
2. That Upgraded Apprentice T. J. Callaway be compensated for eight (8) hours at pro rata rate for being denied his right to work.

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 employees 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.

Upgraded Carman Apprentice T. J. Callaway was assigned to the 12:01 a.m. to 8:00 a.m. shift. On October 8, 1976, at 9:45 p.m., he called to report off due to illness for the shift beginning 12:01 a.m., October 9. He talked with the Foreman of Inspectors then on duty, who did not grant permission but told Callaway that he would have to call the General Car Foreman to receive such permission. Callaway then called the General Car Foreman's home and found that he was not there. He then left a message concerning his absence with the General Car Foreman's wife. This message was apparently delivered in some form, to the General Car Foreman. Callaway did not make a further call to the Car Foreman who was on duty from 11 p.m. to 7 a.m. When Callaway reported for work on the following night, October 10, he was refused permission to go to work. The Carrier states that permission was refused under the provisions of Rule 22, which reads as follows:

"An employe detained from work on account of sickness or for any other good cause shall notify his foreman as early as possible.

An employe returning to work shall report not later than the working hours of his regular shift the day previous to his return."

The Carrier claims that Callaway failed to call in on October 9 to report that he would be returning to work on October 10, as it alleges is required by the Rule; therefore, Callaway was denied permission to work on October 10.

This is an extremely narrow dispute, limited in its implications to the particular facts herein. This is not a disciplinary matter, since discipline given to Callaway for his absence on October 9 is not before the Board for resolution. The issue is solely whether the Carrier properly denied Callaway the right to work on his regular shift on October 10 when he presented himself for duty in the usual manner.

As to the first paragraph of Rule 22, the Board finds Callaway to have been in compliance. The Rule states that notification shall be made to "his" foreman "as early as possible". Logically, if an employe makes such report "as early as possible", then his foreman may not yet be on duty; thus, a report to the foreman on the previous shift (as in this case) does not seem unreasonable. (If an employe waited to report to his foreman, the notification would hardly be "as early as possible").

The Foreman who did speak to Callaway did not grant permission for absence but told Callaway to call the General Car Foreman. Callaway testified at his investigative hearing that he was advised to call the General Car Foreman "at home", a not illogical inference at 9:45 p.m. Callaway complied. The General Car Foreman's wife took the call. She did not refuse to accept the message nor refer Callaway to where her husband could be reached. Instead, she accepted the message, according to Callaway's uncontradicted testimony.

There is evidence that under normal circumstances the foreman on duty at 9:45 p.m. would have accepted the call and granted or withheld permission for absence. The Carrier, however, apparently has special safeguards at certain times, as indicated by the foreman's testimony:

"Q. Could you state as to what your instructions are when employes of our organization want to be off for various reasons?

A. First they must have good reason for being off and since so many lay off Friday and Saturday nights they are to get permission from Mr. Twigg (the General Car Foreman) to lay off." (Emphasis added)

All this, however, is simply background to the particular dispute before the Board. The Carrier states that under the second paragraph of Rule 22 Calaway was obliged to call in again during his absence on October 9 to state specifically that he would return on October 10. Callaway, however, claims that, in talking both to the foreman at 9:45 p.m. and to the General Car Foreman's wife (who accepted the message), that he was reporting off for one day only, namely October 9. If this is true, then Callaway did comply with the second paragraph of Rule 22, in that he specified his time of return to work "no later than" the previous shift to his return. The Rule does not say that an employee must report only "during" the previous shift.

The Carrier draws the conclusion that Callaway simply reported off sick without specifying a time of return, but has no proof that this occurred. In view of Callaway's timely report to the foreman on duty and then his follow up to the General Car Foreman as directed by the foreman on duty, it is not unreasonable to accept his version that he was reporting off sick for one shift (hardly a unique situation among employees in general).

Under these circumstances (and quite apart from discipline for absence on October 9, not at issue here), it is an improper interpretation of Rule 22 to have denied Callaway the right to work on October 10.

A W A R D

Claim sustained.

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 4th day of April, 1979.