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NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 7946  
Docket No. 7906  
2-SCL-EW-'79

JUN 4 1979

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

J. W. GOSMANN

Parties to Dispute: { System Federation No. 42, Railway Employees' Department, A. F. of L. - C. I. O. (Electrical Workers)

{ Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company unjustly and arbitrarily denied Mr. F. McGhee his contractual right to work his regular assigned position on March 14, 1977.
2. That, accordingly, the Seaboard Coast Line Railroad Company be ordered to compensate Mr. McGhee for six (6) hours at the 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 was scheduled to report for work at 3:30 p.m. on March 14, 1977. At 2:30 p.m., he telephoned that he would be late. The record indicates that he stated he would be one hour late and that this was acknowledged by the Carrier. As a matter of some significance to this particular dispute, there is no contradiction in the record to Carrier's statement that the Claimant said he would be "one hour late".

The record is not as clear as to when Claimant actually arrived for work. According to the Organization, "Claimant did report for work at 5 p.m. He was told to wait until the call period of his replacement was over. This he did; at the end of the call he climbed into his crane and was told by his foreman to leave the shop." (Employee Exhibit C-1).

The Carrier's version of what happened is somewhat different:

"The record in this case shows that on March 14, 1977, Crane Operator F. McGhee called in at 2:30 P.M. and was granted permission to be one (1) hour late. Mr. McGhee is normally scheduled to report for work at 3:30 P.M. At about 4:30 P.M. work began to accumulate which required the services of a crane operator.

When Mr. McGhee had not shown up by 5:1 P.M. (sic) the work to be performed had accumulated to the point where it was necessary to call a relief crane operator from the overtime board to fill Mr. McGhee's vacancy the balance of the shift.

Both Mr. McGhee and his relief reported at 5:30 P.M. and Mr. McGhee was sent home and his relief was permitted to complete the shift for which he was called." (Employe Exhibit D-1)

In any event, the Claimant was refused the opportunity to work the remainder of his shift. The Organization claims that this act is in violation of Rules 1, 15, 19 and Appendix "N" of the Agreement. The Board finds that the only rule directly at issue is Rule 19, which reads as follows:

"In case an employee is unavoidably 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."

The Organization argues that the Claimant did notify his foreman "as early as possible"; that no question was raised at the time as to absence of "good cause" for his delay; and that he was "discriminated against" by the Carrier's failure to permit him to work the remainder of his shift when he did report.

In its defense the Carrier refers to a number of previous awards which uphold the right of a carrier not to put a late-reporting employe to work for the remainder of his shift. This particular dispute turns on a narrower issue, however. There is no dispute that the Claimant complied with Rule 19 in advising that he would be one hour late. When he did not arrive by 4:30, he was no longer in compliance with Rule 19, since for any period thereafter the Claimant had not given any further notification. From 4:30 p.m. on, in other words, the Claimant was in an absence without notice period. According to the Carrier, the supervisor in charge waited another 45 minutes to call in a replacement and, when the replacement arrived, he was permitted to go to work. The Claimant was simultaneously denied the right to complete his shift.

For the period beyond 4:30 p.m., the Board finds that previous similar awards are applicable. Award No. 7551 holds in part:

"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."

By failing to report within the period of lateness for which he originally gave notification (i.e., one hour), the Claimant finds himself similarly situated to those who failed to make any notification at all under Rule 19, and thus there was no discriminatory treatment in his case. Nor can the Carrier's action be characterized as a disciplinary measure.

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 - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of May, 1979.