

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: { System Federation No. 6, Railway Employees'
Department, A. F. of L. - C. I. O.
(Carmen)
{ Elgin, Joliet & Eastern Railway Company

Dispute: Claim of Employees:

1. That the Elgin, Joliet & Eastern Railway Company, hereinafter referred to as the Carrier, violated Agreement rules 1, 22 and 35 as well as their own Bulletin Order No. 10 on December 30 and 31, 1976 when the Carrier refused to allow Carman H. T. Weathersby, hereinafter referred to as Claimant, to commence work after reporting to work late on both dates.
2. That the Carrier be ordered to compensate Claimant for a total of seventeen hours and twenty-five minutes (17 hours, 25 minutes) for these violations. Six hours and twenty-five minutes (6 hours, 25 minutes) on December 30, 1976 and three hours (3) hours on December 31, 1976, plus eight hours (8 hours) pay for January 1, 1977 because of Carrier causing Claimant to be disqualified for holiday 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 assigned to work at Carrier's East Joliet, Illinois, Steel Car Shop as a Temporary Carman. His regular work week was Monday through Friday, 8:00 A.M. to 4:30 P.M. On Thursday, December 30, 1976 Claimant reported to work at 9:35 A.M. desiring to go to work. He informed the foreman that he was late due to trouble starting his car because of the cold weather. He was not allowed to commence work at that time and due to misunderstanding the foreman's instructions, he did not work at all that day. On the next day he telephoned the foreman and told him that he was having difficulties with his car and would be late again; the foreman told him to report at 12:30 P.M. or he would not be permitted to work.

Claimant arrived at work at 1:00 P.M. and was not permitted to commence work. By not working on December 31, Claimant failed to qualify for holiday pay for January 1, 1977.

Petitioner argues that Claimant was in fact disciplined by Carrier by being refused permission to work on the two days in question, which was a violation of the discipline rule. It is urged that if Carrier was having attendance and tardiness problems it had recourse to the discipline rule. Further, Petitioner states that Carrier violated Rule 116, which provides in pertinent part:

"(b) In case an employe is unavoidably kept from work he will not be discriminated against. An employe detained from work on account of sickness or any other good cause shall notify his foreman within twenty-four hours. Any employe who violates this rule may be dismissed."

The Organization also states that historically on this property any employe who reported late for work was allowed to commence work and finish out the day.

Carrier argues that every employe has an obligation and a duty "... to report on time and work his scheduled hours, unless he has good and sufficient reason to be late, to be absent, or to leave early. Those reasons must be supported by competent and acceptable evidence." Carrier states that this dispute presents the straight-forward issue of whether or not Carrier violates the Agreement when it refuses an employe permission to commence work after reporting late. As part of its argument, Carrier insists that there is no rule which requires Carrier to permit an employe to work when he reports for his assignment late. Further, in this case, Claimant was neither unavoidably kept from work nor was he discriminated against. In addition Carrier asserts that Claimant was not disciplined and the principle in this dispute has been affirmed consistently by prior awards of this Board. Carrier avers that in its prerogatives to manage its operations it was forced to rearrange its forces to protect the work which Claimant had missed. Carrier states that it has had a serious tardiness problem at this facility and it had taken steps to correct the situation. On January 26, 1976 Carrier posted a notice as follows:

"TO ALL M OF E CAR DEPARTMENT EMPLOYEES:

Employes must report for duty at the prescribed time, and must not absent themselves from duty nor engage a substitute to perform their duty, nor change duties with others without permission from their foreman."

Carrier states that its efforts to correct its attendance problems were not successful and as a result, on February 9, 1977 the Steel Car Shop employees were verbally advised that an employe who failed to report for work at the prescribed time would not be permitted to work that day.

Initially it must be noted that Carrier has the right to establish (and modify) reasonable working rules governing employe conduct which are not in conflict with the collective bargaining agreement. These rules, of course, must be uniformly and consistently applied. This principle is accepted and recognized throughout industry in general and in this industry as well (See Third Division Award 10073, First Division Award 1757 and this Division's 6605 for example). There is no rule in the Schedule Agreement which requires Carrier, in this dispute, to permit an employe to work when he reports for an assignment late. Petitioner's position on this point must be rejected. Carrier has the unqualified right to insist on adherence to working hours (not in conflict with the Agreement); and employes have the obligation to report on time for their scheduled hours in the absence of good and sufficient cause. It must be observed that there is nothing in the record of this dispute, other than bare assertion, to prove that Claimant did indeed have car difficulties on the two days in question. Additionally, there is no evidence whatever of discrimination with respect to Claimant.

There have been a number of disputes before this Board involving the issue of whether Carrier's actions in refusing permission to a tardy employe to finish his work day constitutes discipline. We have consistently held that:

"Having reported late without advance notification, the Claimant is in a tenuous position to demand as a right, assignment to part of his assigned shift. The Carrier's action did not constitute discipline." (Award 7384)

We have reached the same conclusion in Awards 7551 and 7567, among others. It also follows that since Claimant did not work on December 31, 1976 he did not qualify for holiday pay for January 1st (see Award 7355 which is directly analogous).

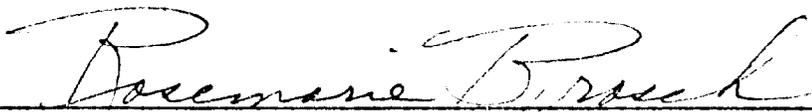
Under all the circumstances and in view of the entire record we must conclude that Carrier's actions in this case were reasonable and did not constitute discipline nor did they violate any other provisions of the Agreement.

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 15th day of August, 1979.