

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: { System Federation No. 114, Railway Employees'
Department, A. F. of L. - C. I. O.
(Electrical Workers)
{
{ Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That at the West Colton Locomotive Maintenance Plant on October 29, 1977, the Southern Pacific Transportation Company violated the controlling Agreement when General Foreman W. V. Barnes sent Electrician P. L. Comorre home from work because Electrician Comorre had failed to notify Mr. Barnes that he would be 45 minutes late for work even though Electrician Comorre had tried twice to notify his supervisor of his tardiness.
2. That Electrician P. L. Comorre be compensated for seven (7) hours and fifteen (15) minutes at the straight pro rata rate for October 29, 1977, by reason that the Carrier violated Rule 25 of the controlling Motive Power and Car Departments Agreement.

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 an electrician stationed at the carrier's West Colton Locomotive Maintenance Plant in Burlington, California. He has submitted a time claim for 7 hours, 45 minutes of straight time pay.

On October 29, 1977, claimant was scheduled to work his regular 7:00 a.m. to 3:00 p.m. shift. He reported to work at least 45 minutes late (55 minutes late according to the carrier). The carrier immediately instructed the claimant to leave the shop. The carrier prevented the claimant from working the remainder of his shift. The claimant admits he was tardy. When he arrived at work, the claimant explained that he overslept. He also said he tried to call his foreman but his telephone was out of order, and on the way to work, he tried to call from a public telephone booth but he did not have any change. The claimant's foreman never received actual notice that claimant would report to his assignment late. At the carrier's direction, another electrician was called in, on overtime, to

perform claimant's duties. There are two contested issues of fact. First, the carrier contends the replacement was called at 7:30 a.m. after the claimant was already 30 minutes late. The organization asserts that the replacement was called in precisely at 7:00 a.m. before the carrier could possibly determine the need for a replacement. Second, the Organization states, and the carrier disagrees, that a machinist reported for work late on the same day and that he was permitted to work.

The carrier initially raises an ostensible defect in the process of prosecuting the instant claim. According to the carrier, the organization failed to specify a date of occurrence when the claim was filed. We must reject this argument. The claim filed on December 5, 1977 was inextricably related to the claimant's prior letter dated October 31, 1977 which was sent to the plant manager. The claimant's letter sufficiently describes his grievance including the occurrence date.

The claimant contends that he complied with Rule 25 of the applicable agreement by promptly notifying his foreman that he was detained from work. Furthermore, the organization asserts the carrier violated Rule 25(b) by discriminating against the claimant. The carrier argues that to insure the efficient flow of work, a replacement had to be assigned to claimant's duties when it appeared as though claimant would be absent for the entire shift. The carrier emphasizes that the foreman received no notification prior to claimant's appearance at the workplace almost an hour after his scheduled starting time so the claimant did not give notice as soon as possible within the meaning of Rule 25(a).

The provisions of Rule 25 govern this dispute and the rule states:

"Rule 25. (a) An employe detained from work account sickness (sic) or for other cause, shall notify his foreman as early as possible. When returning to work he shall give the foreman in charge sufficient notice (at least 8 hours) so that proper arrangements may be made.

(b) If an employe is unavoidably kept from work, he will not be unjustly discriminated against."

The organization falls short of its burden of proving that the claimant gave timely notice. His broken telephone and lack of change excuses are inherently suspect without other substantive evidence (such as a telephone repair receipt). The carrier could reasonably conclude that the claimant was either not truthful or not concerned about providing adequate notice.

Because the claimant created his own problem by oversleeping, the carrier should not suffer due to the claimant's errors. The foreman did not receive notice of claimant's tardiness until after the claimant arrived at the workplace which is essentially no notice at all. Rule 25 places a higher notification duty on the employe and the claimant must submit evidence demonstrating that his failure to give notice was unavoidable. Concomitant with the employe's obligation to protect his assignment, we rule the carrier properly ordered the claimant to

return home. Second Division Awards 7355 (Marx) and 7375 (Weiss). The carrier is not imposing discipline when a tardy employee is not permitted to work the balance of his shift when, in the legitimate pursuit of efficient railroad operation, the carrier has already assigned claimant's work to a replacement. Third Division Award No. 20274 (Eischen); Second Division Award No. 8045 (Lieberman). After reviewing the particular circumstances of his case, we see no reason to deviate from this precedent. A replacement was called here. The time of the replacement call is irrelevant where the record lacks evidence that either the foreman was notified of claimant's tardiness before the replacement was called or that the replacement did not actually perform claimant's assignment.

Lastly, this Board denies the organization's claim on the discrimination issue. Rule 25(b) expressly provides that discrimination will become pertinent to a claim only if the employee is "... unavoidably kept from work..." (Emphasis added) Second Division Award No. 8213 (McMurray). The condition was not satisfied here. Sleeping too late does not constitute an unavoidable reason for tardiness. Second Division Award No. 7067 (Eischen).

A W A R D

Claim is 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 23rd day of July, 1980.