

The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

Parties to Dispute: ( Brotherhood Railway Carmen of the United States and Canada  
( The Kentucky and Indiana Terminal Railroad Company

Dispute: Claim of Employees:

1. That the Kentucky and Indiana Terminal Railroad Company, violated the terms of the Current Agreement when they withheld Carman Donald Yates from working his regular assigned Third Shift position from 11:00 PM, to 7:00 AM, on Saturday, May 24, 1980, which caused him to be ineligible for eight (8) hours Holiday pay for Monday, May 26, 1981, the Memorial Day Holiday, and
2. The Kentucky and Indiana Terminal Railroad Company should be ordered to pay Carman Donald Yates eight (8) hours at the straight time rate of pay due to his being denied his right to work his regular assigned shift on May 24, 1980, and eight (8) hours at the straight time rate of pay in lieu of his being denied his Holiday's pay for the Holiday, May 26, 1980.

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 employes 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.

On and immediately prior to Saturday, May 25, 1980, Claimant was regularly assigned to the third shift car inspector position with work hours scheduled from 11:00 P.M. to 7:00 A.M. At approximately 8:21 P.M. on Thursday, May 22, 1980, Claimant's wife called the Roundhouse Foreman and advised him that her husband fell down a flight of stairs at home, hurt his neck, and that he could not report for his assignment. At approximately 7:00 P.M., on Friday, May 23, 1980, Mrs. Yates again telephoned the Roundhouse Foreman and again advised him that the Claimant could not report for work because he was still bothered by his neck injury.

"At that time, we informed Mr. Yates that due to his injury it would be necessary that he see the company doctor for an examination before returning to his assignment ... He then stated that due to his vacation starting May 26 through the 30th, that he would go to the doctor either on June 2nd or 3rd..."

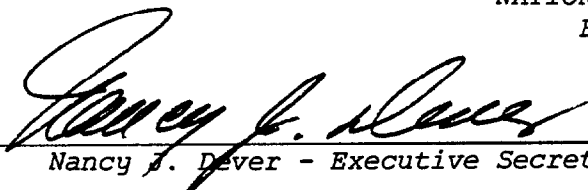
At no time did Employees categorically deny this statement which repeated Mr. Schaefer's report of May 24, 1980. Not until July 29, 1981 - eleven (11) months thereafter - did Mr. Yates present a written statement wherein he stated that "Even though Mr. Schaefer's May 24th memo states that I hurt my leg, back, and neck which is incorrect. I only hurt my neck as is evidence by Mr. Haesler's note on the standard 'Employee Reporting off from duty form' ... At no time did I mention leg and back ...". Nowhere in this statement by Mr. Yates does he deny that he told Mr. Schaefer that he was going to see his doctor and that he was applying a heating pad and soaking his leg in warm water. He does not say that he was ready, able and willing to report for work on Saturday, May 24, 1980. There is no evidence whatsoever in the record that Mr. Yates was able to return to work on that day, or that he advised anyone that he was able to return to work on that day or that he actually did report for work on that day.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 3rd day of October 1984.