

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
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(Fruit Growers Express Company

Dispute: Claim of Employees:

1. That the Fruit Growers Express Company violated the controlling agreement when they failed to allow Paul Wilson to work his regular job on December 31, 1979, therefore denying him the right to qualify for holiday pay for January 1, 1980.
2. That accordingly, the Fruit Growers Express Company be ordered to compensate Paul Wilson in the amount of eight (8) hours pay at pro rata rate for December 31, 1979 and eight (8) hours pay at pro rata rate for the January 1, 1980 holiday.

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.

Except for one, the basic facts in this case are uncontested. During his regular shift at the Carrier's Alexandria Shop on Friday, December 28, 1979, Claimant complained that he was sick. Though the Carrier's nurse determined that Claimant could continue working, the Carrier allowed Claimant to leave early so he could be examined by his personal physician. According to the Carrier, it granted Claimant permission to depart the property prior to the conclusion of his shift with the understanding that Claimant would provide the Carrier with verification of his Doctor's visit on the following Monday. Claimant asserted that the Carrier unconditionally granted him permission to leave early.

On Monday, December 31, 1979, Claimant reported to duty but without written confirmation from his physician regarding his alleged illness on the previous Friday. Claimant informed his Supervisor that the Doctor's statement was at his home. Barring Claimant from commencing work, the Supervisor directed Claimant to go home and return with the physician's statement. Claimant left the property but did not return until January 2, 1980. The Carrier allowed Claimant to work on January 2, 1980 though he had not tendered written confirmation concerning the physician's examination on December 28, 1979. The Carrier did not pay Claimant any wages for December 31, 1979 and did not compensate him for the January 1, 1980 holiday.

Seeking sixteen hours of straight time pay for December 31, 1979 and the holiday, Claimant alleges that the Carrier improperly prohibited him from working on December 31, 1979 which rendered him ineligible for holiday pay. The Organization initially contends that a Doctor's excuse is not a mandatory prerequisite to returning to duty under Rules 17 and 18 of the applicable Agreement. In addition, by preventing Claimant from working his usual shift on December 31, 1979, the Carrier was imposing discipline without first providing Claimant with a fair Rule 27 disciplinary hearing. If such an investigation had been held, Claimant would have testified that mechanical problems with his automobile prevented him from returning to work with the Doctor's excuse on December 31, 1979. Claimant was unavoidably detained from work on December 28, 1979 and thus he should not have been penalized merely because he was ill.

The Carrier contends that Claimant would have been permitted to work on December 31, 1979 if he had tendered a written excuse from his Doctor concerning his illness on the previous Friday. If Claimant had reported back to work with the statement, the Carrier would have not only permitted Claimant to work the remainder of the December 31 shift but also Claimant would have qualified for holiday compensation. Claimant is not due any pay for December 31 because he simply did not perform any service. Since Claimant neither performed any service on the work day immediately preceding the holiday nor received compensation for the work day, Claimant was ineligible for holiday pay covering New Year's Day.

We need not decide if the Carrier conditionally or unconditionally consented to Claimant's early departure from work on December 28, 1979 because Claimant has unequivocally contended that he possessed a statement from his physician. The Carrier was not assessing discipline since it gave Claimant a reasonable opportunity to obtain the medical slip from his home. If Claimant had returned to work he would have been allowed to complete his shift. Thus, the Carrier could rightly conclude that either Claimant did not want to work on December 31, 1979 or he was misrepresenting the existence of the medical verification. This Board notes that Claimant failed to tender a Doctor's statement not only on December 31, 1979 but also during the handling of this claim on the property.


Inasmuch as Claimant did not perform any work on December 31, 1979, he was not entitled to wages. Consequently, Claimant did not satisfy the Rule 7, Paragraph A-3 qualifications for receiving holiday pay.

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 5th day of December 1984.