

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

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(St. Louis Southwestern Railway Company

Dispute: Claim of Employees:

"Claim for four (4) hours, pro rata rate of pay for the following Machinists at Pine Bluff, Arkansas: E. G. Withers, J. P. Beckett, J. A. Hughes, Jr., D. A. Kriner, W. L. Robinson, G. S. Foots, J. L. Hillman, L. D. Cyrus, Jr., T. M. Ruth, M. L. Slaughter, S. J. Tidwell, H. Wells, N. G. Lay, E. R. Massey, Joe Smith and F. C. Matthews, and compensation for their additional personal expense for late payment of bills, etc., due to Carrier having failed to pay them twice during the month of March, 1981, in violation of the controlling Agreement, in particular part, Rule 17-1.

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.

In March 1981, the paydays for employees of the Locomotive Maintenance Plant at Pine Bluff, Arkansas were designated as Monday, March 16, 1981, and Tuesday, March 31, 1981. The rest days of the Claimants were Monday, March 16, and Tuesday, March 17; and they were paid on Friday, March 13. Monday, March 30, and Tuesday, March 31, were the Claimants' rest days, with their last regular working hours for the month of March occurring on Sunday, March 29, 1981. The Claimants were not paid during their regular working hours prior to going on their rest days on March 30 and March 31, 1981. The paychecks became available on Monday, March 30, 1981, on the Claimants' rest days; and the checks were not picked up by the Claimants, until they returned to their regular working hours on Wednesday, April 1, 1981.

The Organization contends that since March 30 and 31, 1981 were the employees' rest days and they were not paid prior to their rest days, they only received one paycheck during the month of March, 1981 during regular working hours, which is contrary to the controlling Agreement, Rule 17-1.

The Organization states that each day's delay in paying off means interest in the Carrier's coffer and thereby contributes to its profit; and it states that the Carrier must also realize the employees have obligations to meet and these obligations are due and payable at certain times and by not receiving paychecks at the appointed time works a hardship on these employees.

The Carrier relies on Rule 17-2 as support that the Agreement was not violated. The Carrier states that there is no Agreement support that the employees are to be paid on the day prior to payday. The Carrier relies on Award No. 1 of P.L. Board No. 2950 as support for its position. The Carrier states even had the Carrier failed to pay its employees properly, which it denies, there is no provision for penalty payment to employees for such a rule violation.

Rule 17 states as follows:

"RULE 17

Paying Off

- 17-1. Employees will be paid off during their regular working hours semi-monthly.
- 17-2. Should the regular payday fall on Sunday, Holiday, or when the shops are closed down, the men will be paid on the preceding day when practicable.
- 17-3. When there is a shortage equal to one day's pay or more in the pay of an employee, a time check will be issued to cover the shortage if requested. Otherwise, the shortage will be carried over to the next pay period.
- 17-4. Employees leaving the service of the Carrier will be furnished a time check covering all time due ordinarily within twenty-four (24) hours at points where time checks are issued and seventy-two (72) hours at other points, or earlier when practicable. (Saturdays, Sundays and holidays excepted.)"

The record is clear that the Carrier did not pay off the Claimants during their regular working hours semi-monthly in March of 1981 as required by Rule 17-1. The facts of this case do not come within the language of Rule 17-2, and the Carrier's assertions as to the applicability of Rule 17-2 must be rejected. The Carrier's contention that Award No. 1 of P.L. Board 2950 is controlling in this case is also rejected, since the facts and issue in that Award are not essentially similar to the facts and issue in this dispute. We find that Rule 4 is not Agreement support to pay the instant claim for 4 hours at that pro rata rate. However, since the Carrier violated Rule 17-1, and lest the Rule end up as worthless words in the Agreement, we believe some payment to the Claimants is appropriate in this case. While the Organization speculates as to the losses and expenses incurred by employees, none was proven in this case. We thus shall sustain the claim for one-half hour's pay at the pro rata rate applicable in March of 1981 to each of the named Claimants. Should this minimal payment not be sufficient to assure compliance with the Rule, this Board reserves the right to increase such should any further violation occur in the future.

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Award No. 10247
Docket No. 9750
2-SLSW-MA-'85

A W A R D

Claim sustained in accordance with Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dexter - Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1985.