Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11103
SECOND DIVISION Docket No. 10430
2-SOU-MA-'87

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

(International Association of Machinists and
(Aerospace Workers
Parties to Dispute: (
(Southern Railway Company

Dispute: Claim of Employes:

1. That the Southern Railway Company, hereinafter referred to as the Carrier, willfully and knowingly violated the current Agreement, especially Rule #33 when it refused to pay Machinist B. D. Powell eight (8) hours for the Good Friday holiday.

2. That accordingly, Carrier be ordered to compensate Machinist B. D. Powell, hereinafter referred to as the Claimant in the amount of eight (8) hours at the pro rata rate of 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 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 were given due notice of hearing thereon.

The Claimant is employed by the Carrier as a Machinist at its Atlanta Diesel Shop. On April 8, 1982, the Claimant reported for duty at 7:00 A.M. Five minutes later, at 7:05 A.M. the Claimant requested to be relieved indicating that he was ill. At 7:09 A.M. the Claimant was given approval to clock out and he did so. April 8 and 12, 1982 were the Claimant's assigned work days before and after the Good Friday holiday which was observed on April 9, 1982.

Contending that the Claimant did not perform any compensable service on April 8 and that he did not have any intention of doing so on that day, the Carrier denied the Claimant holiday pay for Good Friday (April 9). In support of the Claim, the Organization relies on Rule 33, Section 3 of the Agreement which, in relevant part, provides:

> "A regularly assigned employe shall qualify for the holiday pay provided in Section 1 hereof if compensation paid him by the Carrier is credited to the work days immediately preceding and following such holiday or if the employe is not assigned to work but is available for service on such days ***."

The same contractual provisions were interpreted in Second Division Award No. 7174 where this Board sustained a claim for one (1) hour of work. The Board stated:

> "Third Division Award 19128 rejected the concept that entitlement is predicated upon working a full eight (8) hours on qualifying days; but rather, held that there is no minimum number of hours required. Second Division Award 6893 held that if compensation for fifteen (15) minutes were properly paid on the qualifying day, the holiday pay requirements were fulfilled. See also, Second Division Awards 2517, 5126 and 6474. No Awards reaching contrary conclusions have been brought to our attention."

Thus, the key question to be answered in this case is whether the Claimant performed any compensable service on April 8, 1982. The record discloses that when the Claimant requested to be relieved, Foreman Gates sought advice from General Foreman Watson. In granting permission for the Claimant to be relieved, General Foreman Watson told Foreman Gates that he "wouldn't pay him (the Claimant), if he didn't work." Foreman Gates stated that "he has not worked" and General Foreman Watson said, "let him go." Despite Foreman Gates' statement that the Grievant "has not worked," it is undisputed that the Claimant was compensated for nine (9) minutes of work on April 8. Accordingly, the Board has concluded that on the work day immediately preceding Good Friday the Carrier paid the Claimant compensation consistent with the requirement set forth in Rule 33, Section 1 of the Agreement.

In Second Division Award No. 8843, dealing with the same terms of an Agreement contained in Rule 33, Section 3, the Claimant left work after fifteen (15) minutes on the workday immediately following Veterans' Day, a recognized holiday under the Agreement. This Board rejected the Carrier's argument that the Claimant did not perform any compensable service and concluded that the Carrier had "failed to overcome the prima facie evidence in the form of the Claimant's time card that he performed 15 minutes work." In the present case the Claimant's time card for April 8 confirms that he performed nine (9) minutes of work for which he received compensation. The Carrier has failed to overcome the prima facie evidence in the form of Claimant's time card that he performed nine (9) minutes of work.

The Carrier seeks support for its position from Second Division Award No. 9307. In that case, on the workday immediately preceding Christmas, the Claimant handed his time card to his Foreman before he took the phone call from his wife who indicated to him that she and the children were ill and he was needed at home. It is "also unrefuted that the Claimant did not perform any work either on December 23 or December 26." In light of these facts, it is not surprising that this Board in Award No. 9307 observed that the case "presents the most extreme situation that could develop under Article 2, Section 3" which contains the same contractual terms that are at issue in this case. It is sufficient to state that Second Division Award No. 9307, is factually distinguishable from the instant case, and is of no assistance to the Carrier.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of January 1987.