

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12638
Docket No. 12366
93-2-91-2-158

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division TCU
(
(CSX Transportation, Inc. (former
(Chesapeake & Ohio Railway Company)

STATEMENT OF CLAIM:

- "1. That the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter 'carrier') violated the provisions of Rule 22 of the Shop Crafts Agreement between Transportation Communications International Union -- Carmen's Division and the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (revised June 1, 1969) and the service rights of Carman P. A. Stephens (hereinafter 'claimant') when on August 30, 1988 the carrier showed the claimant as 'no report' after the claimant had marked off sick.
2. That, accordingly, the carrier should be instructed to correct the claimant's record to reflect 'sick' instead of 'no report'."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

At the time of the events giving rise to this claim the Claimant was assigned as a Carman at Carrier's Raceland, Kentucky, repair facility. On August 30, 1988, Claimant alleges that he arrived at work, then "took violently ill" and returned home.

Claimant further alleges that he requested that another employee notify his supervisor that he was unable to work that day.

Claimant's supervisor marked the Claimant's attendance record as a "no report" for that day. On the following day, Claimant reported to his supervisor that he was ill the day before and requested the records be changed from "no report" to "sick." When the supervisor declined to do so, the instant claim ensued.

The Organization contends that Carrier violated Rule 22 when the Claimant's record was not corrected. Rule 22 reads as follows:

"Rule 22. In case an employee is unavoidably kept from work, he will not be discriminated against. An employee detained from work account of sickness, or for any other good cause, shall notify his foreman promptly."

The Organization maintains that the Claimant complied with the notification requirement by asking a co-worker to report his illness.

Previous Awards have rejected that argument. See, Second Division Award 11539 on the property and Third Division Award 27711. In this case, there was no explanation on the record as to why, since Claimant was at his work location, he did not personally notify his supervisor as required. Under these circumstances, the Organization failed to meet its burden of proving a Rule violation, and the "no report" on Claimant's record shall stand.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 12th day of January 1994.