

Award No. 4979
Docket No. CL-4891

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

1. The Carrier violated agreement rules and Memorandum of Agreement dated June 13, 1941 when it refuses to allow one day's pay for employees absent due to snowstorm Saturday, December 27, 1947.

2. That Carrier be required to reimburse employees Trested, Baier, Tufano, Macura, Maguire, Dotton, Catalanello, Winez, Kruse for one day's pay deducted from their wages (Saturday, December 27, 1947).

EMPLOYEES' STATEMENT OF FACTS: On December 27, 1947, due to snowstorm that started on the afternoon of December 26, 1947 paralyzing all transportation and communication lines in the New York City metropolitan area, the employees were unable to get to work and in some cases where the telephone service was disrupted they could not telephone to advise their immediate superiors

December 27, 1947 was a Saturday and for many of the employees a half-day and compensated for eight (8) hours in accordance with existing rules and practices.

The following nine (9) employees specified in the claim are located in the offices shown below in the New York area:

Wm. Trested, Clerk, Comptroller's Office, 143 Liberty Street, rate of pay \$286.70 per month, hours of service 9 A.M. to 4:45 P.M. Monday to Friday; Saturday 9 A.M. to 12 Noon.

G. C. Baier, Clerk, Pier 8, New York, rate of pay \$256.40 per month, hours of service 8 A.M. to 5 P.M. (one hour for lunch) Monday to Friday; Saturday 8 A.M. to 12 Noon.

James Tufano, Foreman, Pier 66, rate of pay \$298.00 per month, hours of service 8 A.M. to 5 P.M. (one hour for lunch) Monday to Friday; Saturday 8 A.M. to 12 Noon.

Paul Macura and Margaret Maguire, Clerks, Pier 66. New York, rates of pay \$267.00 per month, hours of service 8 A.M. to 5 P.M. (one hour for lunch) Monday to Friday; Saturday 8 A.M. to 12 Noon.

the employer an opportunity to make such provision as would make full compliance with the rules possible.

In conclusion, the Carrier respectfully submits that the sole cause of the failure to fill these positions was the acts of the employes themselves at a time and under circumstances which made it impossible for the Carrier to make strict compliance with the rules and, in simple justice, they should not be permitted to profit by it.

(Exhibits Not Reproduced.)

OPINION OF BOARD: The petitioners claim pay for Saturday, December 27, 1947, when they were unable to report for work because transportation facilities were not available due to a severe snow storm the previous evening. It is admitted that one of the claimants did not telephone to his office that he would not be able to get to work; and there is a dispute between the parties as to whether the other claimants telephoned. The petitioners state that "with the exception of Mr. Trested, all of the employes in this claim telephoned their respective offices and advised them of their inability to secure transportation * * *." The Carrier asserts that they have no knowledge or record of the telephone calls. There is also a dispute as to whether all of the Saturday work of these claimants was held over and performed by them on Monday. It is admitted that no lower ranking employes filled the vacancies.

The petitioners contend that their claims are supported by Rule 13 and 38 and the Memorandum of June 13, 1941. The cited rules and Memorandum are quoted in the submissions of the parties and need not be repeated here.

It is noteworthy that it is not contended by the petitioners that when they telephoned and advised that they could not get to work, that the Carrier excused them or told them not to report to work. The Carrier contends that the work was available, and the positions open to the employes holding them. Rule 13, relied upon by the petitioners, is a restriction upon the Carrier. It prohibits the Carrier from reducing the work days per week below six. A similar rule was before this Division in Docket CL-4814, Award 4750, where employes had been prevented from working because of a hurricane. In that case some employes reported for work and were sent home. Others telephoned in and were excused by the Carrier from reporting for work, while others stayed home because of advice from sources other than the Carrier and others could not, in fact, get to work. The Opinion of the Board in that case, Referee Carter assisting, states, in part: "It goes without saying that an employe who does not report for work or otherwise make himself available, can gain nothing under Rule 43" (Rule 13). The claims of those who did not telephone the Carrier or who could not in fact get to work were denied. If it is assumed in the instant case that the claimants telephoned, it was for the purpose of advising the Carrier they were unable to get to work. It is not claimed they were excused by the Carrier from working. It can not be said they reported for work or were available for work.

The petitioners also rely on the Memorandum of June 13, 1941, and a settlement made on August 27, 1946. The implication from the information concerning that settlement appearing in this docket is that the Carrier knew in advance of the vacancy that would occur when Moyer served on the Election Board and had consented to it. Under the facts of this case, even assuming the employes telephoned on Saturday morning that they could not get to work, it is not such notice as was contemplated by the parties, and no actual opportunity was afforded to Carrier to move up a lower ranking employe or consult the local chairman respecting the half-day's work.

The petitioners have relied on Awards 3661 and 3926, but we do not find them in point here. In both of those cases the Carrier by its affirmative action either directed the employes not to report for work or, as in Award 3926, changed the relief day so that the employe was prevented from working six days.

We have therefore concluded that, based on the facts of record and the prior awards of this Division, the claim is not valid.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The Carrier did not violate the Agreement as charged.

AWARD

Claims (1) and (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 31st day of July, 1950.