

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Pennsylvania Railroad that:

Mr. Dunlap be compensated 7 hours and 40 minutes at Helper's rate (\$1.587 per hour) for March 9, 1951, when he was denied the right to work as Helper-T. & S., with headquarters at East Liberty, which is his advertised position.

EMPLOYEES' STATEMENT OF FACTS: The claimant, T. W. Dunlap was regularly assigned as T. & S. Helper in Sub-Division No. 1, with East Liberty, Pa., as headquarters, tour of duty 8:00 A. M. to 4:30 P. M., 30-minute lunch period.

On March 9, 1951, the claimant reported for duty at his headquarters at approximately 8:20 A. M. He was informed by his Foreman that before going to work he would have to see Mr. Wiland, Supervisor T. & S., who informed the claimant that he would not be permitted to perform service that day.

We attach hereto Brotherhood's Exhibit No. 1 which is a copy of submission on this claim prepared on the property by Local Chairman and Superintendent, Pittsburgh Division, under date of March 13, 1952, signed by Local Chairman F. C. Bainbridge and Superintendent B. W. Tyler.

This claim has been handled in the usual manner on the property and was progressed up to and including the highest officer of the Carrier designated by the management to whom appeals may be made, without reaching a satisfactory settlement.

There is an agreement between the parties involved in this dispute for rules, bearing effective date of June 1, 1943, except as otherwise specified, and for rates effective September 1, 1949, except as otherwise specified. We understand there is a copy of this agreement on file with the Board, and request is made that it be made a part of the record in this dispute.

POSITION OF EMPLOYEES: It is the position of the Brotherhood that the Carrier violated Article 6, Section 1 (a), of the agreement when it

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employees in this matter.

All data contained herein have been presented to the employee involved or to his duly authorized representative.

(Exhibits not reproduced)

OPINION OF BOARD: Claimant was regularly assigned as T. & S. Helper in Sub-Division No. 1, with East Liberty as headquarters. His bulletined tour of duty was 8 A. M. to 4:30 P. M. along with nine other members of the T. & S. gang. This gang was required to report dressed ready for work at 8 A. M., after which they secured the necessary tools and equipment and, when working away from headquarters, boarded a company truck which transported them to the point of operation for the day.

On March 9, 1951, Claimant arrived at headquarters at approximately 8:20 A. M. in his street clothes. At that time, the other members of the gang were in the truck ready to depart for their point of operation, fifteen miles away. Upon his arrival, Claimant was told by the T. & S. Foreman to see the T. & S. Supervisor before getting ready for work. The Supervisor told Claimant that since he had not reported ready for work at 8 A. M., he would not be permitted to work at all that day.

Claimant contends that this was a "suspension from service" without a trial, and therefore a violation of the discipline rule, Article 6, Section 1 (a) which reads:

"Employees shall not be suspended nor dismissed from service without a fair trial and impartial trial."

He asks for compensation for the seven hours and forty minutes he was not allowed to work on March 9.

Carrier contends that no discipline was involved; that Claimant was required by his bulletin and by Article 2, Section 2 of the Agreement to report for work at 8 A. M.; and that when he failed to do so, Carrier was not obligated to put him to work after that time.

Article 2, Section 2, reads:

"The starting time of the work period of employees where one shift is worked, and the first shift where two or more shifts are worked, shall be established between 6 A. M. and 8 A. M."

In our view, this rule on its face does not deal with the problem of whether a late employee shall be put to work or not, and unless it has been so interpreted by the parties through practice or by awards of this Board, it does not control the problem before us. Although tardiness by employees in reporting to work must be a common occurrence on this and other carriers, the particular problem posed here appears to be one of first impression before the Board. Neither party was able to cite an award involving a similar claim. Nor does the record contain any detailed information as to the customary practice on the property. However, there is some evidence to the effect that in at least some instances, employees reporting late have been allowed to work the remainder of their assignment and have been compensated for the hours of service actually rendered.

It is not established by the record that Claimant's late arrival made it impossible for him to begin his work at that time, or that the Carrier's normal operations made it impracticable for him to do so. When he arrived, the rest of the gang was in the truck "ready to depart". It does not appear that they had been waiting for him up until that point. It is not clear how long they had been "ready to depart," nor is it clear that they would have

had to wait for him at all. Carrier's submission states that Claimant "was still in his street clothes, and **apparently** proposed to delay further while he put on his work clothes." (Emphasis added). He was never given an opportunity to board the truck in his street clothes and thus avoid delay. In any case, it does not appear from the record as a whole that Claimant was kept from working on the theory that it was impossible or impracticable to put him to work under the particular circumstances of that morning. Rather it must be concluded that he was kept from work as a disciplinary measure because his lateness that morning was the culmination of a series of instances of lateness on his part which already had been the subject of discussion among the Foreman, the Supervisor and himself.

The record recites that Claimant had insisted upon reporting to work at 8 A. M. and then changing into his work clothes, rather than reporting at 8 A. M. in his work clothes ready for work as required. He had been called down for this by the Foreman a number of times and eventually had complained to the Supervisor that the Foreman was mistreating him by insisting that he be dressed in his work clothes at 8 A. M. The Supervisor had sustained the Foreman's position. It seems clear that it was with this background in mind that the Supervisor took the action of not permitting him to work when he was late on the day in question. In our view, this was a disciplinary measure, and was not based upon Article 2, Section 2, or upon the particular difficulties of putting Claimant to work on that morning.

We do not pass upon the question of whether or not such discipline might be justified on the facts of record after proper hearing. We do find however, under the particular circumstances of this case, that it was a disciplinary action, and that since the procedures set forth in the discipline rule were not followed, it amounted to a violation of the Agreement.

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

That the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 24th day of January, 1956.