

Award No. 16104
Docket No. MW-16461

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ILLINOIS CENTRAL RAILROAD

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

(1) The Carrier improperly and without just and sufficient cause withheld Section Laborers A. Pagan and W. Lofton from service on December 7 and 8, 1964. (System Case No. 359 MofW C-40-T-64)

(2) The charges placed against Messrs. A. Pagan and W. Lofton be stricken from the record and payment made to each of them for the assigned working hours lost, all in accordance with Section (i) of Rule 25.

OPINION OF BOARD: On December 4, 1964, Claimants were working at snow removal work; they both left the job at about 4:30 P.M., having started to work at about 5 A.M., in spite of instructions by their foreman not to leave. They were suspended from service for two days, December 7 and 8; following hearing for each held on December 9, they were returned to duty with the two days out of service being assessed as the discipline for leaving the job without authorization.

It is the Organization's contention that Claimants were justified in leaving the job by the "safety exception" to the normal rule that an employee may not refrain from performing his assignment with impunity; that is, as Organization states it in its Ex Parte Submission: "... an employee has the right . . . to refrain from executing an assignment when the performance of same would endanger himself. . . ." Organization cites our Award 14067:

"... The corollary to this rule (that an employee is required to carry out his assigned duties even where he feels aggrieved), couched as an exception grants an employee the right to abstain from executing an assignment when confronted by an immediate danger to himself, property, or the public. Such immediate danger to his safety, if proven, exempts an employee from performing his task. . . ."

We point out here that there are conditions which flow from each job and from each incident which must be met before an employe may successfully invoke the "safety exception" to the normal rule: among others, and applicable in this case, the employe invoking the exception must show not only that he seriously believed that carrying out his assignment would endanger him, but also that the involved hazard was not inherently a part of his job.

In the case of Claimants here, working under snow conditions for long hours, with the risk of having to continue to work although tired out, was inherent in the job, and had been done before by both claimants and others in the same job. Nothing in the record demonstrates that either was faced with or thought that he was faced with any danger other than having to work while he was tired out in the unpleasant conditions of the snow storm. We find that essential conditions for successful invocation of the "safety exception" were not shown. Thus, we cannot agree with Organization that Claimants were penalized improperly or without just and sufficient cause.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of February 1968.