

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20965
Docket Number CL-20802

Dana E. Eischen, Referee

PARTIES TO DISPUTE: { (Brotherhood of Railway, Airline and
Steamship Clerks, Freight Handlers,
Express and Station Employees
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7620) that:

1. Carrier violated the Clerks' Rules Agreement when it arbitrarily deducted 20 minutes' pay from Mr. J. A. Rodriguez' pay check when he was late for work through no fault of his own (Carrier's File 280-761).

2. Carrier shall now be required to compensate Mr. J. A. Rodriguez \$2.09, which was deducted from his wage6 00 Carrier's payroll for the second period of July 1973.

OPINION OF BOARD: This claim turns on the meaning of the word "voluntary" in that part of Rule 21 of the controlling Agreement which reads as follows:

"RULE 21

DAY'S WORK, HOURS OF SERVICE AND WORK WEEK

Part 1 - Day's Work and Hours of Service

(a) Day's Work.

Except as otherwise provided in the agreements between the parties, eight consecutive hours or less, exclusive of the meal period, shall constitute a day's work for which eight hours' pay will be allowed.

Employees will not be compensated for time lost voluntarily."
(Emphasis added)

There is no dispute regarding the basic facts out of which the claim for 20 minutes pay (\$2.09) arises. Claimant, J. A. Rodriguez, holds a regular assignment as Material Clerk in Carrier's Storeroom in Houston, Texas, with regular hours of 6:30 A.M. to 3:00 P.M., Monday through Friday. On the morning of Wednesday June 13, 1973 Claimant was driving his automobile to work when one of Carrier's trains blocked the street crossing leading into the shop area from the south. After waiting in vain some 20 minutes for the train to clear the intersection Claimant turned around, took another route, entered the shop area from the north and reported for

work at approximately 6:50 A.M., some 20 minutes after his regular assigned starting time. Carrier docked Claimant's pay for the 20 minutes on the ground that he had lost the time "voluntarily" under Rule 21 supra. The instant claim was filed by Petitioner on behalf of Claimant on August 20, 1973 and was handled without resolution through all stages of appeal on the property.

The question at issue is whether time lost due to Carrier's train blocking for some 30 minutes one of two ingress routes to the shop area is time lost "voluntarily" by the employee. Carrier urges that the phrase "Employees will not be compensated for time lost voluntarily" means that Carrier need not pay employees for anytime worked less than 8 hours a day unless the time loss is caused by Carrier's refusal or failure to permit employees to work their regularly assigned hours. All other tardiness, irrespective of the reason therefore, e.g., traffic accident, weather, detours, Carrier categorizes as "voluntary" under Rule 21. Expanding on this theory in the instant case, Carrier contends that Claimant's "voluntary action" in waiting some time for the train to clear the Intersection was the reason for his being late.

It seems to us that cases of this type are highly individualistic and often turn on the particular facts in a given case. Nonetheless, we may state some general principles which can guide us in interpreting the contested contract clause. It seems clear to us that the voluntary time loss proviso in Rule 21 contemplates noncompensation for lost time due to some act of commission or omission by the employee, i.e., some substantial measure of causation either by creating the situation or incident which causes the tardiness or by failing reasonably either to avoid or extricate himself from the delaying situation or incident.

Applying these principles to the present claim it may be seen that Claimant left home for work early enough that but for the blocked intersection he would have not been late for work taking his regular route into the Shop area. The question remains whether he took reasonable measure to avoid the delaying situation. We are not convinced that Claimant acted unreasonably in waiting for the intersection to clear before finally giving up and retracing his southerly route and looping around to an alternative entrance into the shop area from the north. As noted supra these cases are individualistic and we do not decide any case but the one before us, but on the facts and circumstances before us we cannot conclude that the 20 minutes time lost by Mr. Rodriguez on June 13, 1973 was done so "voluntarily" as that term is used in Rule 21. Accordingly, we shall sustain the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the **parties** waived oral hearing;

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third **Division**

ATTEST:

G. W. Pauls
Executive Secretary

Dated at Chicago, **Illinois**, this 27th day of February 1976.