NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22105
THIRD DIVISION Docket Number CL-22049

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employes
(
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood GL-8347, that:

(a) The Carrier violated the terms of the Agreement between the parties when it unjustly administered discipline of ten (10) days actual suspension to Mr. George M. Pauwels as a result of a spurious charge of having accepted overtime work at 4:00 p.m. on June 8, 1972, then marking off duty at 5:15 p.m. same date causing unnecessary delay and expense to the Railroad Company.

(b) That the Carrier further violated the Agreement between the parties when it failed to compensate Claimant in accordance with Rule 31(f) of the collective bargaining agreement for services performed on June 8, 1972.

(c) The Carrier shall now be required to compensate Mr. George M. Pauwels for all wage and wage equivalents lost during the ten (10) day period he was wrongfully withheld from Carrier's service, and in addition properly compensate him for the service performed on his rest day June 8, 1972.

OPINION OF BOARD: This dispute involves two issues: the first is the matter of the discipline imposed on Claimant and the second deals with whether or not he was paid appropriately for June 8, 1972.

The facts in this matter are not in dispute. Claimant had held a regular assignment as Crew Dispatcher, 4:00 P.M. to midnight shift at Walbridge, Ohio. On Thursday, June 8, 1972, a rest day, Claimant accepted a call for service, at punitive rate for a 4:00 P.M. to midnight vacancy as crew dispatcher. The record indicates that his father-in-law had died that morning and he had left his wife that morning with his sister-in-law and with her full acquiesence to protect the assignment. He testified that he had discussed the assignment with his wife and they both decided

he could protect it. At 5:00 P.M. that day, after Claimant had been on the job, his father-in-law's personal effects were delivered to his home and his wife could not handle the situation and called him. Claimant, after securing appropriate permission from a Carrier official, punched out and went home at 5:15 P.M. The record also indicates that Claimant had asked both the timekeeper and the assistant superintendent, prior to going to work, whether he would be paid for the full trick if he had to mark off early. He also asked the superintendent about compassionate leave and informed him of his bereavement that day.

Claimant was charged with:

> ". . ..accepting call to protect vacancy 4 pm to 12 midnight, Thursday, June 8, 1972, on his rest day, then marking off for personal reasons at 5:15 p.m. on the same date, resulting in unnecessary delay and expense to the Railroad company."

With respect to the disciplinary issue, Carrier takes the position that Claimant was properly disciplined since he voluntarily accepted a call for an overtime assignment with the intent of obtaining the time and a half rate for eight hours even though he planned to, and did, mark off for personal reasons an hour and fifteen minutes after the trick began. Carrier argues that the action of Claimant was similar to past occurrences in which the same action was taken by Claimant. Further, Carrier asserts that the calling of a replacement resulted in delay and additional expense for Carrier.

Petitioner argues that Carrier has not met its burden of proof in the disciplinary aspect of the dispute. It is urged that there is absolutely no evidence to indicate that Claimant intentionally accepted the assignment with the plan to leave early. Further, it is contended that there are no facts to counter Petitioner's allegation that Claimant had a clean record. Petitioner also points out that at least one Carrier officer was aware that Claimant had a bereavement on the day in question and that the possibility of his leaving early existed before he went to work. It is noted that Carrier took no action in spite of that knowledge and thus bears some of the responsibility.

After a thorough review of the record, we are persuaded that Carrier failed to provide substantial evidence that Claimant was guilty of the charge. There is no evidence whatever of his actions causing any delay, as charged; in fact, the evidence indicates that his work was caught up at the time Claimant marked off. With respect to Claimant's past record of similar infractions, as charged by Carrier witnesses and

subsequently argued, we fail to find any specific facts in the record to support such argument. Also it is noted that Rule 27(g) prwides:

> "RULE 27 - INVESTIGATIONS, REPRESENTATION, APPEAL, ETC.
>
> (g) A clear record for the first or second six months of a calendar year will cancel one disciplinary entry on service record made prior to the six months of clear record. A clear record for one calendar year will cancel three disciplinary entries on service record made prior to the year of clear record."

Under that rule it is evident that unless the transgressions were recent, there could not properly be reference to such actions. Perhaps at the core of the decision reached by Carrier was the conclusion that he was deliberately dishonest in accepting the call for the overtime assignment. The only evidence to support that conclusion was Claimant's queries prior to the start of his shift with respect to the compensation if he should not complete the shift. We can only conclude that Carrier's decision and logic were based solely on surmise and suspicion which is insufficient to establish guilt (see Awards 19005, 18551 and others). Consequently, the Carrier's position and discipline must be reversed.

With respect to the second issue, the proper compensation for Claimant for June 8, 1972, we must address ourselves to the record of this aspect of the dispute on the property. It is noted that Carrier continuously reiterated its stance as to the findings of the investigation board and made no further specific reference to the pay for June 8th. Only with its submission to this Board did Carrier raise the argument that the provisions of Rule 31(f) are not applicable to Claimant and he should only have been paid for time worked. The rule in question prwides:

> "RULE 31 - OVERTIME
>
> (f) Service on Rest Days--Seven-Day Service. Service rendered by employes assigned in seven-day service on assigned rest days shall be paid for at the rate of time and one-half time With a minimum of 8 hours at the rate of the position occupied or their regular rate, whichever is higher."

Petitioner alleges that there has never been any dispute between the parties, until this case, that Rule 31(f) provides for a minimum of eight hours'

compensation for rest day service, regardless of the duration of the service. This interpretation was identical to that of the Assistant Superintendent at the investigation and also of the Timekeeper in his testimony. Furthermore, Carrier's Report of Board of Inquiry, dated June 19, 1972, which purported to summarize Carrier's findings arising from the investigation, stated in the last paragraph:

> "Investigation develops that Crew Dispatcher G. M. Pauwels accepted a call on his rest day, entitling himself to 8 hours at punitive rate...."

Although the principles enunciated in the Awards cited by Carrier (Awards 9830 and 18652) are sound, and we generally reaffirm them, they are not applicable to this dispute. The rule in this case provides for minimum compensation, with no exceptions, and has been construed consistently by the parties to cover situations such as that herein. That fact was attested by Carrier's witnesses and its own findings following the investigation. Therefore, based on the entire record, the position of Petitioner must be affirmed.

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 Employes involved in this dispute are respectively Carrier and Employes 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: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 16th day of June 1978.