

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23514
Docket Number ~~MW-23471~~

George S. Roukis, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ Fort Worth and Denver Railway Company

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

(1) The Agreement was violated when Trackman D. J. Maxwell, D. II. Wright, E. M. Linquest and J. E. Paulk were each withheld from service for one work day (May 29, 1979) without just and sufficient cause and without benefit of the procedure stipulated in Agreement Rule 26(a) (System File F-28-79/W-48).

(2) The claimants each be allowed eight (8) hours of pay for May 29, 1979 and eight (8) hours of holiday pay for May 28, 1979 at their respective straight time rates."

OPINION OF BOARD: The facts in this case are: essentially the same as the facts in Third Division Award 22904 Involving the same parties. In that dispute, two employers were not permitted to work when they arrived at their gang location approximately 40 minutes late. The Organization progressed a claim on the supposition that Rule 26(a), the discipline rule, was violated and asserted that Carrier's action constituted a one day's suspension.

Carrier contended that Rule 26(a) was inapplicable and we concurred with its position. The discipline rule was not relevant to the claim. In our conclusion, we stated in pertinent part that:

"Moreover, given all the surrounding circumstances, we are convinced that Carrier's action cannot be viewed as disciplinary in nature. See Awards Fourth Division 2598, Second Division 7834 and PLB No. 1525, Award #3. Carrier's refusal to permit Claimants to work is not tantamount to discipline. As such, Rule 26 is wholly inapplicable. Since this is the only rule that is alleged to have been violated, we will dismiss the claim in its entirety."

In the instant case, Claimants, who were track laborers on the section gang headquartered at Channing, Texas, with assigned hours 8:00 A.M. to 4:30 P.M. Monday through Fridays, reported to work 15 minutes late on Tuesday, May 23, 1979 and were not permitted to work. They contested this action. Similar to Award 22904 they argued that Rule 26(a) was violated and additionally averred that Rule 21(a) was

violated. As Rule 21(a) was inapplicable based upon our decision in the aforementioned Award, we carefully analyzed Rule 21(a) to determine its applicability. Rule 21(a) is an overtime and cell rule, which addresses the method of payment for time worked preceding or following and continuous with a regularly assigned eight hour work period. Under the facts of this case, it is also inapplicable. Carrier had the right to refuse Claimants work when they reported late on May 29, 1979 and it was not discipline. The section gang had been warned on previous occasions to improve its attendance. Award 22904 is dispositive. We will deny 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson

Executive Secretary

Dated at Chicago, Illinois, this 20th day of January 1980.

