

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26605
Docket Number MW-26306

Gil Vernon, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(National Railroad Passenger Corporation
(Amtrak) - Northeast Corridor

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

(1) The Carrier violated the Agreement when it suspended Messrs. R. Gaskill, D. Cirone, D. Alley and J. Curran for two and one-half (2 1/2) hours on June 5, 1983 without benefit of a trial (System File NEC-BMWE-SD-721).

(2) The Carrier also violated the Agreement when it failed and refused to compensate Messrs. R. Gaskill, D. Cirone, D. Alley and J. Curran for the work they performed from 3:30 A.M. to 6:00 A.M. on June 5, 1983.

(3) As a consequence of the violations referred to above, the claimants' personal records shall be cleared ('letter of instructions' removed from their respective personal records) and they shall be allowed two and one-half (2 1/2) hours of pay at their respective straight time rates."

OPINION OF BOARD: Two facts are not disputed in this record (1) that the Claimants left their work site 2-1/2 hours early on the day in question and (2) they were "docked" for this time.

What is disputed is whether the Claimants had permission to leave. The Organization asserts they did have permission to leave and that the next 2-1/2 hours were consumed in travel time and clean-up. Thus, when they were "docked" they argue the Carrier imposed discipline without first--as required by Rule 68--conducting a trial. The Carrier on the other hand asserts that the Claimants did not have permission to leave and accordingly any lost time is due to their own volition.

The Board in this case is faced with critically disputed facts. The key issue here is whether the Claimants had permission to leave. If they did not have permission then discipline did not occur since the Carrier isn't obligated to pay the Claimants for work not performed after they voluntarily terminated their work day. If they did have permission different considerations are brought to bear.

However, there is no basis in this record on which these disputed facts can be resolved. Accordingly, we must dismiss the Claim. This is consistent with our jurisdiction and longstanding precedent. For example, it was stated in Third Division Award No. 21436 thusly:

"This Board has no way of resolving an irreconcilable dispute on facts. We have been faced with such situations many times and have held consistently that under such circumstances the claim must either be denied or dismissed."

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 Claim must be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Payer - Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1987.