

The Third Division consisted of the regular members and in addition Referee Lamont E. Stallworth when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employes
((Southern Pacific Transportation Company
(Eastern Lines

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

(1) The Carrier violated the Agreement when it refused to permit Laborer - Driver R. H. Cormier to work on January 27, 1986 (System File MW-86-34/447-32-A).

(2) Division Engineer J. W. Blasingame failed to disallow the claim, presented to him under date of February 11, 1986, as contractually stipulated within Section 1(a) of Article 15.

(3) As a consequence of either or both (1) and/or (2) above, Laborer-Driver R. H. Cormier shall be allowed '8 hours pay' at his straight time rate."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

At the time of this claim, in January 1986, Claimant was regularly assigned as a Laborer-Driver at Beaumont, Texas. On Monday, January 27, 1986, Claimant reported for work without his required hard hat and safety glasses. Claimant explained to the Carrier's District Manager that, prior to going on vacation from January 20 through January 24, 1986, he had placed his hard hat and glasses in the Carrier's truck which he was assigned to operate. When Claimant reported for duty on January 27, he discovered that on the previous Friday, January 24, the truck had been transferred to a gang at Kountze, Texas, some 25 miles away. The District Manager explained to Claimant that Claimant could not work without his hard hat and safety glasses. Because there were no spare hats and glasses available to lend him, Claimant was sent home for the day without pay.

This claim demands that Claimant be awarded the day's pay he lost on that occasion. The Organization makes two arguments in support of the claim. First, the Organization argues that it is a longstanding custom among employees of the Carrier's Maintenance of Way and Structures Department at Beaumont to keep their safety equipment, such as hard hats and glasses, in the vehicles assigned by the Carrier to their gangs. According to the Organization, the Carrier was aware of this practice and consequently was obliged to ensure that Claimant's equipment was not relocated without his knowledge, rendering him unable to work a scheduled shift. Alternatively, the Organization argues that the claim should be paid as presented because, regardless of its merits, the Carrier erred in allowing the claim to be denied at the initial level by a Carrier Official other than the Official with whom the claim had been filed. The Board will consider these contentions in reverse order.

For its procedural argument, the Organization relies on Article 15, Section 1 of the Agreement. That provision states:

"(a) All claims must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same within sixty (60) days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

As the Carrier points out, this provision does not state nor does it necessarily imply that only the Carrier official receiving a claim may properly rule upon it. Perhaps because the Agreement does not specifically address this matter, the Board has ruled in conflicting ways. However, the most recent decision brought to our attention is Third Division Award 27590, which rejects the Organization's position. In that case the Board exhaustively considered prior Awards and concluded that those which have adopted the Organization's position are poorly-reasoned or explained by other circumstances. The Board observed:

"If it was intended that the designated officer and only the designated officer be the one that could properly respond then it would have been a simple matter to state this result in the Rule, or some other accepted instrument, ... Accordingly, from our present examination of the 'weight of the authority' on this matter we are not persuaded that the decisions holding that only the individual that received the claim can answer the claim are a correct application of those ... rules that have not been altered in some fashion so as to express this specific intent."

There is Second Division precedent for the same view. See, for example, Second Division Award 10066, wherein the Board said:

"[The rule] places a burden on the employee to present the grievance or claim to a particular, authorized Carrier officer. By contrast, the rule does not require that that same officer give written notice of disallowance of a claim. The rule merely requires that 'the Carrier' provide such notification."

As to the merits of the claim, the Board concludes that Claimant has failed to demonstrate a violation by the Carrier when it sent him home. It is not disputed that Claimant did not have with him his mandatory safety equipment. Even if the Carrier was aware that employees regularly left their equipment overnight in the vehicles assigned to their gangs, that knowledge did not relieve the employees of their responsibility to have the equipment with them when beginning their daily work.

The equipment was issued to each employee and there is no question that each employee was expected to be responsible for it. Ample precedent reflects that any employee without his safety equipment may be held out of work without pay, and sent home, until he recovers it and is prepared to go to work. See, e.g., Third Division Awards 25814, 24392. Claimant cannot escape his responsibility merely by asserting that the Carrier was aware that employees often left their equipment in the trucks. When an employee such as Claimant elects to place his equipment in a Carrier vehicle rather than keeping it in his possession, the risk is his that the truck might be moved or the equipment might otherwise become lost or inaccessible to him.

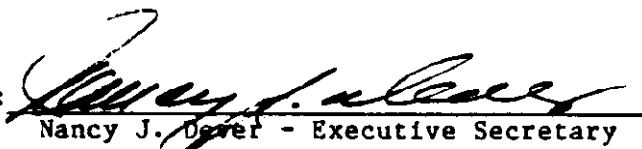
The Organization has suggested that the Carrier was required to follow disciplinary procedures before holding Claimant out of service on the claim date. Not so. This cannot fairly be characterized as a disciplinary suspension. Claimant simply was precluded from working because he did not have the required equipment with him. In other words, he was not prepared to work, and his unpreparedness was not the fault of the Carrier or the result of a choice by the Carrier. When Claimant fails to report prepared to work, the Carrier is not obliged to either pay him or invoke disciplinary procedures. It may simply hold him out, as it did in this case.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1991.