

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37650
Docket No. MW-37502
05-3-02-3-586**

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it did not allow System Gang 8517 Foreman L. J. Long to perform his duties on June 12, 2001 (System File RJ-0133-103/1283600).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant L. J. Long shall now be ' . . . allowed compensation for June 12, 2001 at his Curve Gang Foreman's rate of pay for all hours worked by Gang 8517 and per diem in the amount of forty-eight (\$48.00) dollars ****' "**

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 were given due notice of hearing thereon.

At the time of the incident in question, the Claimant held seniority as a Foreman in the Track Subdepartment dating from April 18, 1997. He was assigned and working as such on System Curve Gang 8517 under the supervision of Track Supervisor E. M. Chavez on the date involved in this dispute.

The Claimant was awarded the bulletined position of Foreman of System Curve Gang 8517 effective May 24, 2001. The position was originally advertised to work from 7:00 A.M. until 3:30 P.M. (½ hour lunch) Monday through Friday. It is uncontested that subsequently, Gang 8517's start time was changed from 7:00 A.M. to 6:00 A.M.

The incident in question took place on June 12, 2001. The Claimant was instructed in advance to be present for work on that date at 5:50 A.M. for a safety meeting. He was on the property at 5:50 A.M., although admittedly preparing for work, rather than attending the safety meeting. Due to the Claimant's absence from the safety meeting, he was sent home without pay and without his per diem pay of \$48.00

The Organization takes the position that the Carrier violated the Agreement when it sent the Claimant home without allowing him to work and earn his wages, including his per diem. According to the Organization, the Claimant was never directly instructed to appear for work at 5:50 A.M. Because he was never given such instruction, it was improper to not allow him to work on that date. The Organization asks that the Claimant be reimbursed for all lost wages, including the lost per diem.

Conversely, the Carrier takes the position that the Organization cannot meet its burden of proof in this matter. It contends that the record clearly shows that the Claimant was instructed to be present for work on June 12, 2001 at 5:50 A.M. It does not contest that the Claimant was on the property at 5:50 A.M., although the Claimant admits that he was still preparing for work as opposed to attending the safety meeting. Basically, the Carrier asserts that the Claimant was given an instruction that he did not follow and that it acted appropriately under the circumstances.

There is insufficient evidence in the record to demonstrate that the Claimant was not instructed to appear at work at 5:50 A.M. on June 12, 2001. While the Claimant may disagree with the instruction, he nonetheless is required to comply and file a claim afterward. The Claimant must "work now, grieve later." It is well established that when an employee is instructed to appear for work at a certain time, even if the employee disagrees with such assignment, he/she must appear at that time, or face the consequences. See Third Division Awards 27226 and 37087. In the instant case, the record shows that the Claimant was told to arrive at work at 5:50 A.M. for a safety meeting, but did not appear as instructed. Thus, the Board finds that the Organization has been unable to meet its burden of proof to show that the Carrier violated the Agreement.

The Carrier acted appropriately when it did not allow the Claimant to work on June 12, 2001. The claim will be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 7th day of December 2005.