Award No. 1234
Docket No. MS-1321

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

INDIANA HARBOR BELT RAILROAD COMPANY

STATEMENT OF CLAIM: "Switch Tender-Leverman F. J. Lindenmeyer, for the reinbursement of one hour deducted from his day's earnings January 30, 1939, account of being one hour late for work due to all transportation being tied up by a snow storm."

EMPLOYES' STATEMENT OF FACTS: "On January 30, 1939, there was a snow storm, and transportation was completely tied up. Traffic, on this date was at a standstill, and many employes in engine and yard service who reported late were paid the day, even though their assignments were unable to work."

POSITION OF EMPLOYES: "Mr. Lindenmeyer was one hour late and the company permitted him to go to work. Due to the condition of the weather on this date, the company was glad to have the employes report at any time. The Committee states that in as much as Mr. Lindenmeyer was permitted to go to work, he was entitled to his full eight hour pay, and the deduction of one hour's pay, only paying Mr. Lindenmeyer for 7 (seven) hours on January 30, 1939, is a violation of Schedule Rule Article 2 Paragraph A, reading as follows:

'ARTICLE II.

Basic Day and Overtime

'(a) Eight hours or less shall constitute a day's work.'

"Committee further contends that the deduction of one hour's pay from Mr. Lindenmeyer's day's earnings, would establish a precedent, and under similar conditions the Management would deduct time when employes would be late, and would not give proper consideration to the explanation of their reason for being late. We do not agree that the action on the part of the Management was in keeping with the intent of the rule.

"All matters spoken of herein have been discussed in conference with the Management. The Amended Railway Labor Act has been complied with, and we are asking you to take jurisdiction and render decision."

CARRIER'S STATEMENT OF FACTS: "Mr. F. J. Lindenmeyer was regularly employed as Leverman on the 7:00 A. M. to 3:00 P. M. shift at East End Tower, Gibson, Indiana in January 1939 and on the 30th day of that month was one hour late in going on duty.

to refuse to permit an employe to begin work if he did not report on time. To this the committee would not commit themselves, thereby indicating that, if the employe were not permitted to go to work, claim would be made for a day's pay for him.

"The Board is urged to decline to place any such interpretation on the rule and to deny the claim as being without merit."

OPINION OF BOARD: The facts in this case are undisputed and fully set forth in the Statement of Facts.

Article 2, paragraph (a) of the agreement was not intended by the parties thereto to determine, and does not determine, the right of an employe who has a regular assignment to be paid for time when absent because of being late in reporting to work. The agreement contains no express provision governing the right of an employe to be paid when late in reporting to work, but the agreement does contemplate that an employe with a regular assignment shall report for work at a fixed starting time. (Article 3, paragraph (a)). In the absence of an express provision in the agreement governing the right of an employe to be paid when late in reporting to work, and it being admitted that the employe was late through no fault or neglect of the employer, and the employer being obligated, under Article 2, paragraph (b) of the agreement, to pay time and one-half for overtime, and the employer having paid the employe on the shift immediately preceding claimant's shift one and one-half times the hourly rate during the absence of the claimant, the Board is of the opinion that there is shown no violation of the existing agreement, and further that the employer was authorized to deduct from claimant's pay for the time he was absent from work on account of being late.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and employe involved in this dispute are respectively carrier and employe 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 there was no violation of the existing agreement between the parties, and the deduction from claimant's pay was justified under the facts presented.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of November, 1940.