

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when it failed to allow Section Laborers A. E. Sexton, S. C. Whitman, J. Olivigni, W. Harbeson, and R. H. Bullock three (3) hours' pay as provided in Rule 35 when they reported at the usual starting time and place for the day's work on April 21, 1952, and conditions prevented eight (8) hours' work being performed;

(2) Each of the Claimants referred to in Part (1) of this claim be allowed three (3) hours' pay at their respective pro rata rates account of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Claimants named in Part (1) of our Statement of Claim are regularly assigned as Section Laborers at Elsie, Nebraska, under the supervision of Section Foreman C. F. Herron.

This gang is regularly assigned to commence their day's work at 7:30 A. M. and the Claimants are compensated on an hourly basis.

On April 21, 1953, the Claimants reported at their designated time and place for the day's work. Upon arrival, Section Foreman Herron informed the Claimants that the prevailing weather conditions (rain) prevented work being performed.

No compensation was allowed these Claimants for reporting and not being used on the date herein involved.

Claim was submitted in behalf of each of the Claimants requesting that they be allowed three (3) hours' pay at their respective pro rata rates, because of reporting and not used.

Claim was declined at all stages of appeal.

The Agreement between the two parties to this dispute dated September 1, 1949, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

provisions in Rule 36 requiring the Carrier to resort to such wasteful and unnecessary practices as contended for by the claimants in this case. The only reasonable and practicable method of notifying employes who choose to live in isolation from their point of employment, without any means of communication, is that employed by the Carrier in this case. That is to say, by issuing instructions to the gang not to report for work on days when it is raining prior to their assigned starting time.

Compare the reasonableness of these instructions with the most unreasonable demand of the Petitioner that the foreman be required to visit the home of each individual member of the gang immediately prior to the gang's starting time for the purpose of notifying each employe individually that it is raining, and that therefore the employe is not required to report for work on that day. Such a requirement would necessitate a 36 mile trip by the foreman, and in weather conditions which prevailed on the date specified in the claim would possibly consume several hours. Under the circumstances, it must be concluded that the instructions in effect constitute a reasonable advance notice as referred to by the Board in Award 5313.

The provisions of Rule 36 are clear and unambiguous, and as the Board stated in Award 5313, in order to be eligible to receive pay under the rule employes must be required to report at the usual starting time and place for the day's work. In the instant dispute, the claimants were not required to report; on the contrary they were specifically instructed and notified by their foreman not to report on days when it was raining prior to their starting time.

In the light of the foregoing, the Carrier respectfully submits that the compensatory provisions of Rule 36 are not applicable when employes are not required to report for duty at the usual starting time and place; furthermore, the claimants are estopped from invoking the provisions of Rule 36 because their action in reporting on the date specified in the claim was a voluntary act solely in disobedience of orders from their supervisor. Consequently there is no basis upon which a sustaining award may be founded, and the claim must be denied.

* * * *

The Carrier affirmatively asserts that all data herein and herewith submitted has been previously submitted to the Employees.

* * * *

(Exhibits not reproduced.)

OPINION OF BOARD: Employes complain that "blanket standing instructions" of the Carrier have deprived them of pay provided by rule for being required to report at usual starting time and place for day's work when conditions prevent work being performed. (Rule 36. Reporting and not used.)

Specific complaint is that standing instructions not to report when it is raining are in violation of the intent of the effective Agreement as shown by its evolution and change. The Employees apparently recognize the right of the railroad management to avoid Carrier paying for constructive service providing reasonable notice is given not "to report at usual starting time and place for the day's work."

When we get into the realm of what is reasonable and what is not, the Board will not engage in speculation, guess, or surmise. What might be reasonable under one set of facts and circumstances could be unreasonable in another, and, of course, the reverse also is true. So, in cases like the instant one the facts take on greater prominence than usual and are largely controlling.

We would not be understood to say that we lend any great amount of support to instructions like those in effect at certain points on this property. Nevertheless, we recognize and respect the right of management to manage and expect of the Employees that they will abide by those instructions which fall within the legitimate sphere of management. On the other hand, and at any time we find instructions running counter to the rules, as they sometimes do, claims will be sustained.

The reason claims are not being sustained in this case is that the facts do not warrant it. There has been no showing made that the instructions in question have been arbitrarily used and applied to deprive claimants of benefits provided by rule. It is not denied that each of Claimants had instructions not to report when it was raining prior to and at the assigned starting time. It was and had been raining sometime prior to and at the assigned starting time. The rain was general, or at least we are not informed if it was not raining at both the headquarters and the workers' homes.

Under the foregoing facts and circumstances Claimants reported at the work site despite management's specific instructions not to do so and would now collect claims for not abiding by instructions, under circumstances which show they have not been prejudiced by the instructions about which they complain.

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 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

Under peculiar facts and circumstances of this docket, the Agreement was not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 21st day of March, 1955.