

Award No. 11047

Docket No. CL-10756

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE PENNSYLVANIA RAILROAD COMPANY

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

Discipline of reprimand imposed upon Martin Dillon, Extra Trucker, 11th Street Freight Station, Pittsburgh, Pa., Pittsburgh Region, be removed from his service record. [Docket 187]

OPINION OF BOARD: Under date of January 14, 1957, the Carrier mailed a letter to the Claimant, which read as follows:

"At the present time you are assigned to the Extra List at this station. A notice has been posted on the Bulletin Board and Foreman advised you regularly as follows:

All extra employees, who have made less than forty hours in their work week, are ordered to work at 8:45 A. M. on Saturdays.

On January 12, 1957 you were absent without permission which cannot be permitted.

In the future, if you fail to protect your assignment, disciplinary action will be taken."

Claimant failed to report for work on Saturday, February 2, 1957, three weeks after he was warned. Trial was held on February 8, 1957 on the following charge:

"Absence from duty without permission on Saturday, February 2, 1957."

Under date of February 13, 1957, the Claimant was notified that he was disciplined by a reprimand.

Claimant admitted that he did not work on Saturday, February 2, 1957, that he did not work forty hours that week, that he did not report

his absence on February 2 and that he received the letter of January 14, 1957, above quoted. When he was asked why he failed to protect his assignment on Saturday, February 2nd, he replied: "I am an extra employe covered by Extra List Agreement No. 2 at 11th Street Freight Station, and it is my opinion, since I am not guaranteed any employment, I am not required to report at my own expense."

The Organization contends that extra employes are not required to report "with any regularity or on special days." The requirement to report is voluntary and not mandatory. In support of its position, the Organization cites Rule 5-C-1 which says:

"Where extra employes are used extra boards will be established by agreement between the Management and the Division Chairman. The number of extra employes to be used and the manner in which will work will be determined by written agreement between the Management and the Division Chairman."

The Organization also cites the following Sections of Extra List Agreement No. 2 which, it argues, is applicable in this case:

"1 (b) Extra work and vacancies in regular positions will be protected to the extent that extra men are available on this extra list.

"2. Employes assigned to this extra list will be considered available for service protected by this extra list, provided they report at or before each starting time of the regular position.

* * * * *

"8. At each starting time extra employes who are not available for service in seniority order at the time check of available force is made by Foreman will forfeit their right to call for service in seniority order that tour of duty. Such employes will revert to the foot of the extra list and may be used in seniority order after all junior employes have been afforded service that tour of duty."

"Availability", the Organization argues, "is recognized only if they report for work." Since reporting for such work is voluntary, the only penalty to which Claimant was subject was under Section 8 which would move him "to the foot of the extra list." The notice placed on the bulletin board and mailed to Claimant "would impose upon Claimant and all other extra employes who had not worked 40 hours in any week, the responsibility of reporting for work on Saturday in every such week, without any assurance that they would be permitted to work that day. The Agreement does not guarantee work to employes on the Extra List.

The Carrier argues that it has the right to order extra employes to report for work and the failure to so report without good and sufficient cause permits the Carrier to discipline the employe.

The purpose for the existence of extra employes is to permit the Carrier to fill emergency vacancies and to provide for extra services. Extra employes who are on the Extra List are employes not assigned to regular positions. The number of employes on such Extra List are agreed to by the parties. As such they are governed by the Rules of the Master Agreement as well as by the terms of the Extra List Agreement.

There would be no purpose for having an Extra List if extra employees were not required to report when directed to do so. If all extra employees voluntarily refused to report without a good and sufficient excuse, Carrier's operations would be materially affected. It is conceivable that under such circumstances the Carrier would not be able to operate some of its facilities resulting in a great loss to Carrier, its passengers and to its freight customers. In Award 5189 (Boyd) we said:

"When the relationship of employer and employee is created, the employer (Carrier) may assume that, subject to all of the terms of the Agreement governing the employment, the employee will keep himself ready, able and willing to perform the duties of his employment. By reason of the nature of the work of the Carrier, this obligation on the part of the employee is of particular importance. This is so even where the employee is holding a position as an extra. The Carrier has the right to assume that an extra employee will not wilfully or capriciously refrain from responding to a call; and if a Carrier has reason to believe, after a fair hearing, that an extra employee failed, without just cause to be available to receive and respond to a call to service, it may subject such employee to discipline."

Claimant was specifically instructed to report for work on Saturdays, if he did not work forty hours in any week. He was notified by letter of previous absences and told "if he again failed to protect his assignment that disciplinary action will be taken." He had no valid and sufficient excuse for not reporting. His defense is that he was an extra employee and that, in his opinion, he was not required to report at his own expense. At the hearing held on March 18, 1957 he was asked what the Carrier can expect from him in the future. He replied: "for convenience, and if possible, I intend to call in and report off if I am unable to come to work on Saturdays."

We cannot agree with the Organization's position that the only penalty for failure of the Claimant to report on Saturday, February 2nd, was to place him at the foot of the extra list. Neither can we agree with the Organization's position that the Claimant had no obligation to report for work as directed. When the notice was posted there was a direct request and direction for the employee to report. It no longer became a voluntary, discretionary decision with the employee. We do not think that this is inconsistent with the Rules of the Master Agreement or with the terms of Extra List Agreement No. 2. The Sections in the Extra List Agreement cited by the Organization, which are quoted in this Opinion, do not relieve the Claimant from reporting for work when he is directed to do so unless he has a good and sufficient reason for not reporting. There is no evidence in the record that the Carrier's order for such extra employees to report on Saturday was arbitrary, capricious or done with any malicious intent.

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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of January 1963.