

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20051  
Docket Number MS-20229

Dana Eischen, Referee

(James L. Beach  
PARTIES TO DISPUTE: (  
(Western Weighing and Inspection Bureau

STATEMENT OF CLAIM: The particular question at issue upon which award is sought is whether or not I am entitled to compensation for the workday December 11, 1970, when I reported to work at and before my assigned 7:30 A.M. starting time and was advised by Mr. Boman, my foreman, that my job had been abolished and that I was no longer on the bureau payroll. Further, is the Bureau justified in its refusal to pay me for the wage loss on that particular day on the basis of its contention that it attempted to contact me at some time after 8:00 A.M. on December 11, 1970, to inform me that my job had not, in fact, been abolished, that the strike had been settled, and that I should report back to work. Does the contention that I was not available to receive this subsequent advice justify the Bureau's refusal to compensate me for wage loss when the Bureau's foreman incorrectly advised me at and before my assigned starting time that I did not have a job and was not on the payroll? The amount of reparation and wage loss sought is \$27.92.

OPINION OF BOARD: The instant claim grew out of occurrences on December 11, 1970, the day after a railroad work stoppage was halted. Claimant and some 35 fellow employees on the 7:30 A.M. to 4:30 P.M. tour in the Grain Door Department presented themselves at the yard office after learning that the work stoppage was over. Foreman R. A. Boman opened the yard office and suggested that the group of employees come in from the cold. Claimant thereupon asked Foreman Boman, "Am I on the payroll?" The record indicated a basic conflict between the testimony of Foreman Boman and Claimant regarding the response to that inquiry.

Claimant states that in answer to his question, the Foreman replied "Certainly not." Therefore, Claimant avers, he believed he was trespassing and, accordingly, left the property. The Foreman insists that he responded to the effect that he couldn't say until he had contacted his District Office which opened at 8:00 A.M., to find out how many positions would be reinstated. Moreover, Boman states that he asked all of the employees to wait and informed them that those who were used would receive pay for their full eight-hour tour.

All of the employees waited until 8:00 A.M. except Claimant and two other employees. Those who waited all were put on their jobs pursuant to District Office directive and paid for eight hours. The three who left were called by telephone to report for work. Two responded and returned but Claimant did not respond to two telephone calls until 3:00 P.M., at which time he was told it was too late in the day to report and that he should report on Monday, December 14, 1970, his next assigned work day.

After reviewing the entire record, we shall not decide this dispute by recourse to either of the parties' conflicting versions of their conversation. Rather this matter turns on the above noted facts that Claimant was given the same opportunity to remain and work as were all the employees; and the same opportunity to return and work as the other two who left. We find that despite these opportunities Claimant chose to leave the property and failed to respond to calls for his return. Inasmuch as he chose not to make himself reasonably available for work, we will deny the claim.

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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1973.