

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20170
Docket Number CL-20214

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and
(Station Employees

PARTIES TO DISPUTE: (

(Chicago, Milwaukee, St. Paul and Pacific
(Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7290) that:

1) Carrier violated the Clerks' Rules Agreement at Chicago, Illinois when it disciplined an employe without benefit of an investigation and/or notification in writing prior thereto of a precise charge being made.

2) Carrier shall now be required to compensate employe L. Kas for six hours and fifteen minutes (6'15") at the straight time rate of Comptometer Operator Position for November 24, 1971; and eight (8) hours pay at the pro rata rate as holiday pay for Thanksgiving Day, November 25, 1971.

OPINION OF BOARD: Claimant reported for work one hour and forty-five minutes late on November 24, 1971 and was not permitted to work the remainder of her assigned hours of 8:25 a.m. to 4:55 p.m. As result, she was not credited for pay on November 24, which, in turn, disqualified her for Holiday pay for Thanksgiving Day on November 25. She returned to service on Friday, November 26. The claim seeks compensation at straight time for the time she was available to work on November 24 and for Holiday pay for Thanksgiving.

The Carrier defends both on the time limits rule and the merits. We shall first consider the time limits defense.

The Carrier asserts that the initial claim was not received by the authorized official of Carrier until January 26, 1972, which was 63 days after November 24, 1971 and 3 days beyond the 60-day time limit on the filing of claims. The Employees assert that the claim letter was dated January 22, 1972, four days before receipt by Carrier, but they concede that they have no proof that the claim was presented within 60 days after November 24, 1971. The Employees contend, though, that November 24, 1971 is not a critical date because the time limit did not start to run until December 13, 1971, which was when Claimant received a pay check short of two days pay. Thus, the issue presented is whether the "date of the occurrence on which the claim or grievance is based" is November 24 or December 13, 1971.

On the property the Local Chairman indicated that he regarded November 24 as the date of occurrence. In his initial claim letter January 22, 1972, he stated the following:

"It is the position of the Employees that when Carrier fails to permit an employee to work the remainder of the day after being tardy, this is considered a disciplinary action taken against an employee, and since the procedures set forth in Rule 22 prohibit such action, the Carrier violated Rule 22." (Underlines added.)

A similar view was expressed by the General Chairman in his letter of June 26, 1972:

"It remains the position of the Employees that the Carrier did in fact discipline employee Kas when it sent her home at 10:10 A.M., on November 24, 1971, without the benefit of an investigation and/or notification in writing prior thereto of a precise charge being made." (Underlines added.)

Another statement of the same viewpoint about November 24 is found in the Employee's Submission argument that the Claimant's -

"... position was there at 10:30 a.m. on November 24th and she was available, ready and willing at that time to try to make up the time lost by her unavoidable tardiness, and the Carrier's action in sending her home was arbitrary and unwarranted."

The foregoing quotations show that the Employees have consistently made statements to the effect that November 24 was the date of the "occurrence" on which the claim is based.

Such statements, being in the clearest of terms, can only be read as admissions against the Employees' contention that December 13 was the date of such "occurrence". Consequently, on the basis of such admissions and the record as a whole we find that the 60-day time limit began to run on November 24, 1971 and, thus, the Carrier's receipt of the claim 63 days later, on January 26, 1972, was not within the time limits. In conclusion we note that Award 11997 (Seff), quoted in the Employees' Rebuttal Brief, is not apropos to this dispute. The dispute in that Award involved a claim for non-payment of work actually performed, but such non-payment was not known until the date of receipt of pay. In this dispute the Claimant did not work on November 24, so she knew she would not be paid for that date.

In view of the foregoing, we shall dismiss the claim.

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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

The Agreement was not violated.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1974.