NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21188
Docket Number CL-21246

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, GL-7851, that:

1. Carrier violated Rule 21 (a) of the Clerks' Rules Agreement when it arbitrarily deducted 136 hours and 42 minutes' pay from the paychecks of ninety-nine Claimants, Jan Allen, et al. (Carrier's File 205-4883)

2. Carrier shall now be required to compensate the ninety-nine Claimants, Jan Allen, et al., for the amount of money which was deducted from their earnings as set forth in Employes' Exhibits Nos. 1, 2, 3 and 4.

OPINION OF BOARD: There is no dispute with respect to the basic facts upon which this Claim is based. Ninety-nine Claimants were late to work on four different days for varying amounts of time ranging from two minutes to five hours and twenty minutes; the tardiness was attributed to two major snowstorms (ten plus inches each) on December 19th and 30th, 1973. The lateness occurred on December 19, 20, 21 and 31. Petitioner also stated that employes in Carrier departments other than the General Accounting Department did not have any deductions made for tardiness on the days in question.

Petitioner bases its Claim on Rule 21 (a), which provides:

"RULE 21
DAY'S WORK, HOURS OF SERVICE AND WORK WEEK
Part 1 -- Day's Work and Hours of Service
(a) Day's Work.
Except as otherwise provided in the agreements between the parties, eight consecutive hours or less, exclusive of the meal period, shall constitute a day's work, for which eight hours' pay will be allowed.

Employes will not be compensated for time lost voluntarily."

Carrier granted permission for all the employes in the General Accounting Department to end their tour of duty one hour early on December 19 and 31, 1973 because of the weather conditions.

The Organization's position succinctly is that the employes involved did not lose time "voluntarily" as provided in Rule 21 (a); they were late for work due to the severe snow storms and extremely hazardous driving conditions which were beyond their control. It is argued that if an employe loses time involuntarily, then the eight hours or less phrase of the Rule becomes operative and the eight hour guarantee of compensation applies.

Carrier, agreeing that Rule 21 (a) is controlling in this dispute, asserts that Claimants' failure to arrive at work on time on the various dates was solely and directly the consequence of voluntary decisions by each individual as to when to leave for work in the face of the storm conditions. Carrier asserts that there is no showing whatever that the employes involved made proper allowances for the known weather conditions, and such failures were the sole reason for the tardiness. Carrier argues that even in the absence of a rule such as 21 (a) it is not required to compensate an employee who is not ready and willing to work and who does not make himself available to work.

The key question in this dispute is whether the situation in this dispute can be interpreted as time lost voluntarily or not. We have recently dealt with a similar problem involving the same parties and Rule, Award 20965, and held in that dispute that "....cases of this type are highly individualistic and often turn on the particular facts in a given case." however, some sound general principles were enunciated in that Award:

> "It seems clear to us that the voluntary time loss proviso in Rule 21 comtemplates noncompensation for lost time due to some act of commission or omission by the employe, i.e. some substantial measure of causation either by creating the situation or incident which causes the tardiness or by failing reasonably either to avoid or extricate himself from the delaying situation or incident."

It is noted that in the Award cited above we sustained the Claim after determining that Claimant took reasonable measures to avoid the delaying situation.

It seems evident that the severe snowstorms on December 19th and 30th lent prima facie support to Petitioner's position that the employes were tardy by virtue of circumstances which were reasonably beyond their control; even though specific evidence for each employe is lacking in this case, the severity of the weather conditions is undenied and Carrier recognized the problem by permitting employes to leave one hour early each day. We recognize the seriousness of tardiness and Carrier's legitimate concerns and desires to preserve the integrity of the work force; however, in the face of the provisions of Rule 21 (a) and the particular circumstances prevalent on December 19th and 31st we find that the lateness may not be categorized as "time lost voluntarily". With respect to the problems employes

experienced on December 20th and 21st, however, we have a different view. On those dates the employes were well aware of the weather conditions which were caused by the storm on the 19th and knew of the difficulties of coming to work. In the absence of specific information in each individual case we have no means of knowing whether or not the employes took reasonable steps to attempt to get to work on time. It must be concluded that Petitioner has failed to support the Claims for those days with credible evidence. It is noted that Carrier's failure to dock employes in other departments for tardiness on the days in question was certainly not determinative of the dispute herein.

Carrier argues that seven of the Claimants wrote to Carrier withdrawing or terminating their claims and hence the Board has no jurisdiction to consider such claims. We note that the record indicates that the seven individuals wrote to the General Chairman not the Carrier, asking that their Claims be withdrawn. Cases cited by Carrier deal with claims which were settled by the individual Claimants and Carriers. It is well established by many sound awards that an individual subject to a collective bargaining agreement cannot properly disregard or negate the agreement's provisions by his own agreements with an employer (see Awards 4461, 5834, 6858 and 20237 among others). In this instance there was no settlement of the individual claims, no waivers and indeed no direct communication with Carrier; Petitioner has the right to progress these Claims, since it has the sole right to police and enforce the agreement.

There appears to be some disagreement with respect to the specific amount of time each Claimant was docked. A joint check of payroll records is the appropriate means of determining the relevant facts, and will be determinative of this aspect of the dispute.

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 Employes involved in this dispute are respectively Carrier and Employes 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 violated.

A W A R D

Claim sustained, with the proviso above, for December 19th and 31st; Claim denied for December 20th and 21st, 1973.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 13th day of August 1976.