

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25371
Docket Number SG-24678

Martin F. Scheinman, Referee

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(Southern Pacific Transportation Company
Eastern Lines

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company (Eastern Lines):

On behalf of Assistant Signalman L. P. LeJeune for eight hours' pay each day, July 2, 3 and 4, 1981, account Carrier instructed him to lay off July 2 and 3. [Carrier file: 326-72-A]

OPINION OF BOARD: On June 26, 1981, Claimant, L. P. LeJeune, had dental surgery performed. Because of increasing pain and fever on July 1, Claimant contacted Operations Manager R. D. Bramlett and asked him for permission to lay off that day. Permission was granted. According to the Organization, Operations Manager Bramlett also required Claimant to lay off on July 2 and 3, even though he did not ask to be off those two days. In Carrier's view, Operations Manager Bramlett told Claimant to lay off until he was well and did not require Claimant to lay off on July 2 and 3.

Claimant did not work on July 2 and 3. In addition, he did not receive Holiday pay for July 4, 1981, because such pay is contingent upon a regularly assigned employe having compensation paid by Carrier credited to the work day immediately before a Holiday.

As a result of Carrier's failure to compensate Claimant on July 2, 3 and 4, 1981, the Organization filed this claim. In it, the Organization alleges that Carrier violated Rules 310(b) and 311 of the Agreement. Those Rules read, in relevant part:

"310(b) General. Subject to the exceptions contained in this agreement, the Carrier will establish a work week of forty (40) hours, consisting of five (5) days of eight (8) hours each with two (2) consecutive days off in each seven (7);"

"311. Basic Work Week

The regularly established daily working hours will not be reduced below eight (8) per day, nor will the regularly established number of working days be reduced below five (5) per week to avoid making force reductions, unless agreed to in writing by the General Chairman..."

The Organization contends that Carrier improperly required Claimant to lay off on July 2 and 3. It notes that Claimant so affirmed, in writing. Moreover, the Organization argues, Operations Manager Bramlett did not specifically deny this allegation. Instead, according to the Organization, Operations Manager Bramlett simply told Claimant not to return to work until he was well. Thus, the Organization reasons that Operations Manager Bramlett's statement is too vague to overcome Claimant's specific assertion. Accordingly, the Organization concludes that Carrier improperly laid Claimant off on July 2 and 3, 1981. Therefore, it seeks, as remedy, eight hours' pay for those days as well as the July 4 Holiday.

Carrier, on the other hand, denies that it violated the Agreement here. It insists that Operations Manager Bramlett did not advise Claimant to lay off on July 2 and 3, 1981. Instead, according to Carrier, Claimant was specifically told not to return to work until he was well. Thus, Carrier reasons that Claimant voluntarily absented himself from work on the days in question. Accordingly, Carrier concludes that it properly denied Claimant compensation for July 2 and 3 as well as the July 4 Holiday.

It is axiomatic in labor relations generally and claim administration under the Railway Labor Act specifically, that the party who makes an assertion bears the burden of proving it. Here, the Organization has alleged that Operations Manager Bramlett required Claimant to lay off on the two days at issue. However, Carrier has specifically and consistently denied this allegation. From the time this claim was initially submitted, Carrier has maintained that Operations Manager Bramlett advised Claimant that he could return to work when he was well. Thus, the Organization has failed to prove that Claimant was required to lay off on July 2 and 3, 1981.

We can understand Claimant's frustration in not prevailing here. However, we are without power to sustain this claim since the record evidence does not weigh in favor of the proponent of the principal argument - the Organization. Accordingly, the claim must fail for want of sufficient proof.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

Attest:


Nancy J. Dyer - Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1985.