

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25525
Docket Number MW-25705

James Robert Cox, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(The Chesapeake and Ohio Railway Company

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

(1) The Carrier violated the Agreement when it failed and refused to compensate Trackman G. Davis for the one (1) hour of work he performed on November 10, 1982 and when it failed and refused to allow him holiday pay for Veterans Day (November 11, 1982) (System File C-TC-1604/MG-3869).

(2) Because of the aforesaid violations, Trackman G. Davis shall be allowed one (1) hour of pay at his straight time rate for the work he performed on November 10, 1982 and eight (8) hours of holiday pay for Veterans Day (November 11, 1982).

OPINION OF BOARD: Claimant, Trackman G. Davis, seeks one hour of straight time pay for work performed November 10, 1982, and eight hours Holiday pay for Veterans Day, November 11, 1982. In order to qualify for the Holiday pay an employe must have compensated service credited to him on the work days preceding and following a Holiday. The Carrier contends that on November 10, 1982, Claimant merely reported for work but then went home sick with permission.

Claimant's work day commenced at 7:30 a.m. His Acting Foreman contends that he instructed him to back up the assigned vehicle to the garage and load tools and materials; then went to the Track Supervisor's office to receive instructions. When he returned to the crew at 8:15 a.m. he told them that "anyone who does not want to work in rain could go home". Davis responded that he would drive his personal vehicle to the job site and, if the rain continued, would go home since he was suffering from a cold. The Acting Foreman's statement indicates that he gave him permission to leave under those circumstances. Claimant drove to the site and told the Assistant Supervisor that he would not continue to work and was going to the doctor.

The Carrier contends that, pursuant to instructions from the Track Supervisor, the Acting Foreman asked a number of men in his crew if they chose to work in light rain and then reported to the Track Supervisor that all had elected to work except Davis.

The determining factor here is when Davis asked permission to leave the job that morning. The record shows that Davis had not, although he had prior permission, made a final determination to leave until he had informed the Assistant Track Supervisor of his departure at 8:30 a.m. There is no evidence indicating that Davis left before that time or that he did not perform the loading work at the start of the work day. There was no evidence that he had refused any assignment during that first hour of his scheduled work day.

The Carrier relies upon the Track Supervisor's statement that the Assistant Foreman advised him, in their 8:15 meeting, that Claimant had chosen not to work and that, therefore, he must have made his election not to work prior to that time. This assertion is contradicted by the Acting Foreman's statement.

The evidence established that Claimant did perform physical work and/or was on duty awaiting assignment during an hour of working time before electing to go home; an election made with the consent of his Supervisor.

Since he was on duty for this period and left with permission from his immediate Supervisor, Claimant should have been compensated for this period and, therefore, he qualified for Holiday pay.

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

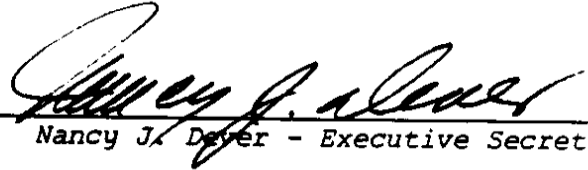
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dyer - Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1985.

