

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25947
Docket Number MS-25518

John E. Cloney, Referee

(Jane A. Phillips

PARTIES TO DISPUTE: (

(Missouri Pacific Railroad Company

STATEMENT OF CLAIM:

"1. The Carrier violated Rule 26 of the Clerks' Agreement when they failed to compensate me at the appropriate rate of pay as required by the Rules Agreement.

2. Carrier shall be required to compensate me for two days pay at the Pro Rata rate of my position of # 593 Waybill Adjustment Clerk, rated \$79.46 per day, Total \$158.92, representing holiday pay for dates of November 26 and 27, 1981."

OPINION OF BOARD: Claimant worked her regular assignment on November 25, 1981 (except for approximately one hour off "to see a lawyer"). Thursday, November 26 and Friday, November 27 were holidays. Her days of rest were Saturday and Sunday. On Monday, November 30 she reported at 7:45 A.M. for her 8:00 A.M. starting time. She advised her Supervisor that her mother was ill in a town some 100 miles away, that she had driven in that morning and had to return to transport her mother to a different hospital. She alleges she asked how long she had to work so as to not lose her Holiday Pay and says she was told she had to stay through attendance check and was then free to leave. She left at 9:05 A.M. and was paid for one hour and five minutes work.

The Carrier has refused to pay Holiday Pay.

Rule 26 of the Agreement provides in pertinent part:

"A regularly assigned employee shall qualify for the holiday pay provided in paragraph (c) hereof if compensation paid him by the carrier is credited to the work days immediately preceding and following such holiday or if the employee is not assigned to work but is available for service on such days. . . "

Claimant contends she made herself "available" by reporting on November 30 and left "in joint accord with my supervisor's authorization".

The Carrier argues Claimant obviously planned to remain at work only a very short time on November 30 because she made inquiry before starting time. It contends she was absent without pay at her own request for the balance of that day and the day after. The purpose of the Rule according to the Carrier is to establish "continuity of presence" and an employee who

reports to "display a presence for the shortest period of time" does not meet the Rule's requirements.

Both parties have cited prior Awards dealing with the question before us including Third Division Awards to the effect that if employees perform any service for which they have been paid the Rule requirement is met (23414, 23398). Absent from those Awards, however, is an indication of the circumstances involved. In a later Second Division Award (9307) it was stated:

"While the Board has over the years attempted to apply contract language as it is written, we have also tried to apply the language in a fair, equitable, and reasonable way so that the intent of the parties is carried out. It is the opinion of the Board in this instance that the intent of the parties would be undermined if this Board were to issue a sustaining award The uncontroverted facts of this record support carrier's contention that Claimant . . . never did intend to perform any service. . . . This Board under the guise of a literal interpretation of the agreement, could not condone such an action."
(Emphasis supplied)

We do not believe these two lines of cases are necessarily in conflict. While this Board may be in sympathy with Claimant's reason for leaving, we must conclude she reported on November 30 with the preconceived determination to remain on duty for a minimal period and then leave. The potential for abuse if such conduct were held acceptable is too apparent to require exposition. We conclude such conduct does not fulfill the requirements of the Rule.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearings:

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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

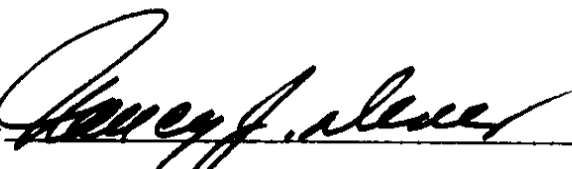
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest.



Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 14th day of March 1986.