

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30431
Docket No. MW-30889
94-3-92-3-739

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Consolidated Rail Corporation

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

- (1) The Carrier's decision to place a mark into Mr. A. Hastings' record for his alleged failure to report for duty on April 18, 1991 was in violation of Rule 27, Section 1(a). (System Docket MW-2114)
- (2) As a consequence of the violation referred to in Part (1) above, the mark and all reference thereto shall be removed from Mr. Hastings' record."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The essential facts of this case are not in dispute. On April 17, 1991, a national rail strike occurred involving Carrier employes of all crafts. The strike was officially ended through Congressional Legislation at 1:39 A.M. EDT, April 18, 1991. Carrier notified all General Chairmen of the termination of the strike by facsimile at approximately 1:17 A.M. on April 18, 1991.

Claimant held a position in the Maintenance of Way Repair Shop at Canton, Ohio. His regular tour of duty began at 7:00 A.M. Claimant did not report for work on April 18, 1991, nor did he report his absence to his supervisor. Carrier subsequently made a notation of an "unauthorized" absence in Claimant's absenteeism record. In protesting the notation, the Organization maintained that ultimate notification of Claimant's District Chairman by the Organization did not occur until well after the start of Claimant's tour of duty. Carrier's denial included the observation that the end of the strike was announced on all area radio stations and information regarding status of the strike was also available directly from Carrier.

The dispute over Claimant's culpability is moot, however, in light of Carrier's violation of Rule 27, Section 1(a) of the Agreement between the Parties. Rule 27, Section 1(a) reads as follows:

"(a) Except as provided in Section 2 of this Rule, employees shall not be suspended nor dismissed from service without a fair and impartial hearing nor will an unfavorable mark be placed upon their discipline record without written notice thereof." (Emphasis added)

It is apparent from the evidence before the Board that Carrier did not notify Claimant in writing of its notation of "unauthorized absence" on his record. Accordingly, the instant Claim must be sustained.

AWARD

Claim sustained.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 8th day of August 1994.