

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37087
Docket No. SG-37698
04-3-03-3-20

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific (UP):

Claim on behalf of C. L. Caballero, for seven hours and 55 minutes at the Signal Shop Technician's rate of pay, account Carrier violated the current Signalmen's Agreement, particularly Rules 6 and 80, when it failed to allow the Claimant to work on September 28, 2001. Carrier's File No. 1296968. General Chairman's File No. S-6,80-212. BRS File Case No. 12287-UP.”

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 were given due notice of hearing thereon.

On the date in question, the Claimant was scheduled to report for service at 3:00 P.M. for his position of Signal Shop Technician at Carrier's Sedalia, Missouri, Signal Shop. At approximately 2:55 P.M., the Claimant called the Shop Manager and informed him that he would not be able to report at the scheduled reporting time because he was at that time still in line to get his automobile license plates renewed. The Shop Manager informed the Claimant that he should have taken care of his personal business so as not to prevent him from reporting for work on time. The Shop Manager further informed the Claimant that if he could not report on time for his assignment he would not be permitted to report late. The Claimant did not report for or perform any service on the claim date.

The claim as initiated and progressed on the Claimant's behalf alleged that he would have been able to report "five minutes late." However, there is no evidence in the case record to support this assertion. The Claimant did not show up at the work site so there is absolutely no proof that he would have been only five minutes late.

During the on-property handling of the dispute, the Organization argued that the Claimant had been discriminated against because another employee at the same shop had been given permission to report 30 minutes late on the same date. This allegation of disparate treatment was pursued in a complaint filed with the Carrier's Equal Employment Opportunity Department. The E.E.O. Department, after conducting an objective evaluation of the issues involved, concluded that there was a significant difference between the separate factual situations involved in the complaint and that there was no discernable discrimination involved.

The basic issue in this case is not new or novel. One of the better-reasoned opinions in this regard is found in Third Division Award 24428 where it was held:

"The same issue has been adjudicated in the Third Division (Award 22904 - Scheinman, Award 23294 - LaRocco, Award 22287 - Weiss, Award 21598 - Smedley), wherein the Board upheld the Carrier's right to withhold work from an employee on the day he is tardy. An employee who is late without approval or good reason is in a tenuous position to demand the right to complete his assignment. Given the surrounding circumstances of this case we are convinced that the Carrier's action was not disciplinary in nature. The claim will therefore be denied."

See also Third Division Award 27226 and the numerous Awards cited therein.

In this case, the Claimant had neither previously requested nor received prior permission to report late for his assignment. In this case, the reason for his tardiness was a situation that he created for himself by conducting his personal business which could have been handled without apparent inconvenience to the Claimant at some other time further removed from the starting time of his assignment. These circumstances were considered by the E.E.O. Department as non-discriminatory when considered against a late reporting situation involving a real estate closing that had been pre-arranged to occur at a time certain and over which the involved employee had little control.

The Carrier's refusal to permit the Claimant to work when he did not report on time for his assignment did not cause a violation of either RULE 6 - ESTABLISHED HOURS AND DAYS or RULE 80 - LOSS OF EARNINGS of the Agreement. Therefore, the claim is denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 21st day of July 2004.