

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42248  
Docket No. MW-41849  
16-3-NRAB-00003-120156**

**The Third Division consisted of the regular members and in addition Referee Sinclair Kossoff when award was rendered.**

**(Brotherhood of Maintenance of Way Employees Division -  
( IBT Rail Conference  
PARTIES TO DISPUTE: (  
(Union Pacific Railroad Company (former Missouri  
( Pacific Railroad Company)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier failed and refused to allow Foreman C. Foggie to work on October 16, 2010 (System File UP935PA10/1545105 MPR).**
- (2) The Agreement was violated when the Carrier failed and refused to allow Trackman D. Robinzine to work on October 16, 2010 (System File UP936PA10/1545106).**
- (3) As a consequence of the violation referred to in Part (1) above, Claimant C. Foggie shall now '\*\*\*be compensated for this date's wages along with his off day per/diem that he lost due to this incident.'**
- (4) As a consequence of the violation referred to in Part (2) above, Claimant D. Robinzine shall now '\*\*\* be compensated for this date's wages along with his off day per/diem that he lost due to this incident.'”**

**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.

The Claimants - Foreman C. Foggie and Trackman D. Robinzine - each separately arrived about two minutes late for work on October 16, 2010, at approximately 7:02 A.M. Although he did not so inform his Supervisor on October 16, Claimant Robinzine attributed the cause of his lateness to problems he was having with his vehicle before starting for work. Claimant Foggie did not give any reason for being late at the time of his arrival at work, but later that day he called his Supervisor to explain that on his way to work he was stopped by an Ennis, Texas, Police Officer for improper display of his license plate. Temporary Supervisor Tommy Prichard did not permit either employee to work that day because they were late and he sent them home. As a result, both employees, who were assigned to Gang 9183 on a T1 compressed half work schedule, lost ten hours of straight-time pay and their off-day per diem allowance.

The Organization submitted the instant claims to the Carrier on behalf of each of the Claimants by separate letters dated November 19, 2010, which recited the facts substantially as set forth above. On behalf of Claimant Robinzine, the Organization contended that he complied with his Supervisor's instructions to advise his Foreman that he was running late. The letter stated that the Claimant's Foreman tried to explain his own (the Foreman's) situation to Temporary Supervisor Prichard, but was denied a chance to do so, and that the Foreman also "... did not have the opportunity to explain that [the] Claimant had called him to notify him that he was running late." The letter on behalf of Claimant Foggie stated that he tried to explain why he was late to the Temporary Supervisor "... but was told to leave and return on time the following day." The letter further stated that Claimant Foggie had never been late for work in the past.

The Carrier replied by separate letters dated January 11, 2011, for each of the Claimants, denying their claims. The declination letter regarding Claimant Robinzine stated that the Organization had not provided any documentation to substantiate that he could not have arrived at his gang's designated assembly point

prior to the start of his shift on October 16, 2010. Nor, the letter stated, had the Organization cited a specific provision of the Parties' Agreement or arbitral authority that would justify payment to Claimant Robinzine as requested. The same arguments were made in the Carrier's declination letter of January 11, 2011, in response to the claim on behalf of Claimant Foggie.

The Carrier's letter of January 11, 2011, regarding Claimant Robinzine contained an attached email dated December 1, 2010, from Manager Track Programs Chad Rose stating that Temporary Supervisor Prichard, who was working with Gang 9183, said at the morning job briefing on August 3, 2010, that everyone had to be at work at the assigned work hour of 7:00 A.M. and that he (Prichard) reiterated the same information at the morning job briefing on September 6, 2010. Claimant Robinzine was present at the job briefing on both days, Manager Rose stated. On October 16, 2010, Manager Rose said in his email, that Robinzine showed up at 7:02 A.M. and offered no explanation at that time for his tardiness. Prichard, the Supervisor of Gang 9183, Manager Rose stated, told Claimant Robinzine to go home and come back the following day on time. Supervisor Prichard, Manager Rose stated, acted in accordance with UPRR Rule 1.15, which states, "Employees must report for duty at the designated time and place with the necessary equipment to perform their duties." "Mr. Robinzine," Manager Rose's email stated, "... left without any explanation why he was late."

The Carrier's letter of January 11, 2011, regarding Claimant Foggie also contained an attached email statement dated December 1, 2010, from Manager Rose with similar contents to the latter's statement pertaining to Claimant Robinzine. Manager Rose stated that Foreman Foggie was present at the August 3 and September 6, 2010, morning job briefings when Supervisor Prichard said that everyone needed to be at work at the assigned work hour of 7:00 A.M. On October 16, 2010, Manager Rose wrote, Claimant Foggie showed up at 7:02 A.M. and offered no explanation at that time for his tardiness. He was told by Supervisor Prichard to go home and come back the following day on time, Manager Rose stated, in accordance with UPRR Rule 1.15. "Mr. Foggie," Manager Rose stated in his email, "... left without providing any explanation why he was late." Manager Rose further stated, "Mr. Foggie called Mr. Prichard at 0900 to give an explanation of his tardiness at which time Mr. Prichard explained to him that he should have discussed this with him earlier and that 2 hours had already expired."

By letter dated February 22, 2011, the Organization appealed the denial of the claim on behalf of Trackman Robinzine. The letter reiterated the arguments

previously made by the Carrier on his behalf and enclosed a copy of his signed statement dated October 21, 2010, in the form of a letter to the Vice Chairman of the Organization, which stated, in pertinent, part as follows:

**“I am writing you this letter to inform you about an incident that occurred on Saturday, October 16th with Tommy Prichard our supervisor at this time for GANG #9183, who previously told us that if we were going to be late to let the foreman know in advance. Which I did that morning. I showed up two minutes late and was unjustified sent home after I had called my foreman to let him know that I would be a couple minutes late. In addition to that roll call didn't even had taken place yet.**

**In result of his actions, I have lost my off-day pay per diem and a work day that I shouldn't have lost. . . .”**

The Organization's February 22, 2011 letter explained that Claimant Robinzine was in his personal vehicle and had no idea that Foreman Foggie was also running late. Nor, the Organization stated, did he know that his Foreman did not call in and let Supervisor Prichard know that both of them were running late.

The Organization further stated in its February 22, 2011 letter that Supervisor Prichard placed the responsibility on the Foreman to receive calls from employees to report that they were going to be tardy so that the employees would not have to call him directly. “[The] Claimant would have called his supervisor if he had know[n] that his Foreman was running late too,” the Organization's letter stated. The letter added that the fact that roll call did not start that morning until 7:05 A.M. was an additional fact supporting the claim.

In a separate letter dated February 22, 2011, the Organization also appealed the denial of Foreman Foggie's claim. The letter reiterated the arguments previously made on behalf of Claimant Foggie and enclosed a statement by him dated October 19, 2010, in the form of a letter to the Vice Chairman which stated, in pertinent part, as follows:

**“. . . On Saturday, October 16, I arrived a minute late to roll call and was sent home. When I attempted to explain, I was asked to leave and return on time the following day.**

The temporary supervisor did not give my situation the proper respect and understanding it truly deserved. On 10/16 at 6:45, I was stopped by the Ennis police department stating that my plates were not properly displayed. I was given a warning, and the opportunity to adjust my license plates. If I had not been stopped, I would have arrived on time.

I feel that the situation is not warranted because I have never been sent home, or written up in all of my years with the railroad. Therefore, I would like you to consider compensation for October 16, 2010 . . . .”

The Organization's letter also noted that the Carrier had provided a supporting statement from Prichard's Supervisor and not Temporary Supervisor Prichard himself.

The Carrier responded to the Organization's appeal letters of February 22, 2011, by separate letters dated April 8, 2011, for each of the Claimants in which it reaffirmed its decision to deny the claims. The letters made the following three arguments: (1) It is undisputed that each of the Claimants was late for work and that the Supervisor verbally warned everyone during morning job briefings to be on time. The Carrier cited four Third Division Awards that purportedly held that the Carrier has the right to send an employee home if he or she fails to come to work on time. (2) Each of the Claimants was tardy on two previous occasions. (3) There is no provision in the Agreement that would support the relief sought by the Claimants. Specifically, with regard to per diem, the Agreement requires employees to work the last day prior to their rest days and the first day following their rest days in order to receive the per diem payment. The Carrier's April 8, 2011 letters enclosed the following statement from Temporary Supervisor Prichard in the form of an email dated April 7, 2011 09:00 P.M. in reply to an email from the Assistant Director Labor Relations dated April 7, 2011 04:39 P.M.:

“I am not sure of the exact dates as this info is in last year's planner and I have not been home yet. On two occasions approximately 90 days and 30 days respectively I addressed the whole gang, gang 9186, about being on time for job briefing. These individuals were both present for the instructions. The morning of the incident, neither one offered an excuse or reason for being late. They both exited the meeting room immediately. At around 0900 Mr. Foggie

called and offered the excuse that he had been pulled over by a city police officer and given a verbal warning. I told him that it was too late for excuses and he would be counted as "UA" for the day and forfeit his off day per diem. No excuse for being late was offered at the time of dismissal."

With regard to the claim on behalf of Claimant Robinzine, the Board accepts as true his signed statement that Supervisor Prichard instructed the members of his gang to let the Foreman know in advance if they were going to be late for work. The Carrier produced no evidence contradicting Claimant Robinzine's statement on that point. The Organization contends that by instructing the employees to call the Foreman to let him know in advance that they would be late for work, the Supervisor was implicitly informing them that someone with an adequate excuse would be allowed to work.

The Board does not believe that instructing employees to notify the Foreman if they are going to be late necessarily means that an employee with an adequate excuse will be allowed to work. For example, if an employee is going to be very late, it may be necessary to call in someone from another shift to substitute for that person. If the crew will be shorthanded, it may be necessary to rearrange the order of the work or eliminate some of it for that day. Knowledge of available manpower is very important for supervision in order to schedule work efficiently.

The fact is, however, that Claimant Robinzine did not tell either Foreman Foggie or Temporary Supervisor Prichard why he was late for work on October 16, 2010. Although the Organization's cover letter to the Carrier accompanying the filing of Claimant Robinzine's claim stated that he was experiencing problems with his vehicle before going in to work, there is no supporting statement from Claimant Robinzine for that assertion. His statement of October 21, 2010, offers no explanation for his tardiness. Nor does Claimant Foggie's statement of October 19, 2010, shed any light on the reason for Claimant Robinzine's tardiness. A second undated statement signed by Claimant Foggie merely states, "David [Robinzine] had informed me that he would be late via phone . . .," without giving any reason for the tardiness. Clearly there is no evidence in the record to support a finding that Claimant Robinzine had an adequate reason for being late for work on October 16, 2010. His claim was properly denied. See Third Division Award 40394 between these same Parties.

The October 19 statement of Claimant Foggie does offer an excuse for his tardiness on October 16, 2010. However, in the statement he admits that he did not convey this information to Temporary Supervisor Prichard and explain why he was late: "When I attempted to explain," he wrote, "I was asked to leave and return on time the following day." Temporary Supervisor Prichard's statement contradicts Claimant Foggie. Prichard stated, ". . . The morning of the incident, neither one [Claimant Foggie nor Claimant Robinzine] offered an excuse or reason for being late. They both exited the meeting room immediately." Thus, both Claimant Foggie and his Supervisor are in agreement that Claimant Foggie left the work site on October 16, 2010, without providing an excuse for being late. They dispute, however, whether Claimant Foggie had the opportunity to offer an excuse.

In reviewing the record, the Board is persuaded that Claimant Foggie's contention that Temporary Supervisor Prichard did not permit him to explain the reason for his tardiness - although Prichard admittedly did listen to his excuse when Claimant Foggie called two hours later - is not more plausible than Supervisor Prichard's statement that Claimant Foggie offered no excuse for being late but exited the meeting room immediately. On this posture of the facts, the Board finds that the Organization has not sustained its burden of proof to establish that Claimant Foggie attempted to explain why he was late for work but was not given the opportunity to do so by his Supervisor. See Third Division Award 37650. Having found that the Organization failed to establish that Claimant Foggie was prevented from offering an excuse for his tardiness, the Board will not rule on the question of whether the Carrier would have been required to permit him to work had he, in fact, offered the excuse prior to leaving after being sent home.

There are numerous Awards upholding the right of the Carrier to refuse to permit an employee to work when the employee arrives late for work. See Third Division Award 27226 and Awards cited therein. The Board has also permitted the Carrier to charge the employee sent home for being late with an unauthorized absence. See Third Division Award 40394. Accordingly, the instant claims are denied.

**AWARD**

Claim denied.

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**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 29th day of February 2016.**