

PUBLIC LAW BOARD NO. 4219 Case No. 2
ESTABLISHED UNDER AGREEMENT BETWEEN THE PARTIES

Neutral Member: Lamont E. Stallworth

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employees
and
Union Pacific Railroad Company.

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

1. The Carrier violated the provisions of the current Agreement when it suspended System Gang Employee Mr. J. B. Cornett for a period of eight (8) hours and fifty-five (55) minutes for July 22, 1985 and also causing loss of the daily per diem allowance.

2. Claimant will now be allowed 8 hours and 55 minutes pay at his respective straight time rate and, in addition thereto, the applicable per diem allowance for July 22, 1985.

OPINION OF BOARD: At the time the incident giving rise to this claim occurred, the Claimant was employed on System Gang No. 814, working near Topeka, Kansas. The system gangs are composed of employees from all over the Carrier's system. On the weekend prior to the day in question the Claimant returned to his home in Kansas City, in lieu of staying in the outfit car near Topeka. Kansas City is approximately seventy (70) miles from Topeka.

On Monday, July 22, 1985 the Claimant reported late for his 6:00 a.m. starting time. The Organization alleges that the Claimant informed his immediate supervisor that his reason for being tardy was because of an unusual volume of traffic. The supervisor allegedly referred the Claimant to the foreman, who

refused to allow him to work that day, since he was not available at the beginning of the shift.

On August 1, 1985 the Organization filed a claim on behalf of the Claimant, contending that the Carrier violated the contract by in effect suspending the Claimant for eight hours and forty-five minutes on the day in question, and by denying him his per diem allowance for that day. The Organization stated that although the Claimant was only five minutes late originally, it took him another ten minutes to be able to talk to his supervisor, and therefore the original claim was for only eight hours and forty-five minutes, not eight hours, fifty-five minutes, as is the claim here.

The Carrier denied the claim, contending that the Claimant was in fact thirty (30) minutes late. In addition, the Carrier contended that unless an employe makes specific arrangements for late arrival, he cannot report late and then expect to work the balance of his regular tour of duty. Furthermore, the Carrier relied upon the Claimant's prior instances of tardiness to justify its action in this case. The Organization rejected the Carrier's denial, the Parties could not settle the claim, and it proceeded to this Board for resolution.

This Board concludes that the claim must be denied. The Organization contends that when the Carrier disciplined the Claimant through a one-day suspension, it violated the collective bargaining agreement's language stating that an employe "shall not be ... disciplined until after being accorded a fair and

impartial hearing." (Rule 48). The Organization submits other cases decided by the National Railroad Adjustment Board which have held that discipline may not be imposed without a fair investigation and hearing first.

There is no dispute that the Claimant in the instant case did not receive such a hearing. The Carrier, however, argues that a hearing was not required because no discipline was imposed, and in any case, its action was appropriate. The Carrier relies upon many awards issued by the National Railroad Adjustment Board which hold that a carrier's refusal to allow an employe to work after he has reported late does not constitute a disciplinary action, as that term is used in the industry. (Second Division, Award Nos. 7384, 7782, 8045). Other decisions have stated that the discipline issue is simply not germane, because the agreement does not give an employe the right to report for less than a full shift. (Second Division Award No. 8213, Third Division Award No. 23514).

Whether or not the Board regards the Carrier's action as disciplinary, it is clear that prior decisions of the National Railroad Adjustment Board have consistently held that an employe has no right to work a full shift if he arrives late without advance notice. The cases cited by the Organization apply to the general situation of a Carrier imposing discipline without a hearing, but they do not address the specific case of an employe arriving late without notice. The Carrier's cases do address

this specific situation, and therefore are controlling. Thus, the claim must be denied.

AWARD

The claim is denied.

Signed at Chicago, Illinois on

12th of June, 1927

Lamont E. Stallworth

Lamont E. Stallworth
Neutral Member

E. R. Myers
Carrier Member

C. F. Foose
Organization Member