

The First Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers)
(Southern Pacific Transportation Co. (Western Lines))

STATEMENT OF CLAIM:

"Claim of Tucson District Engineer R. F. Kaveloh, Jr., for compensation for time lost account being suspended for fifteen days on February 10, 1986."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

As a result of charges dated January 24, 1986, Investigation held on January 30, 1986, and by letter dated February 10, 1986, Claimant, an employee with 13 years of service (10 as an Engineer) was suspended for 15 days for failing to report for duty at the proper designated time and place and absenting himself from duty without proper authority.

On January 23, 1986, Claimant was returned to service after missing approximately five months (represented by the Carrier as a dismissal and reinstatement resulting from proceedings before Special Board of Adjustment 180). Claimant made application and was awarded Relief Yard Job 573. That job was bulletined to work Friday through Tuesday, with Wednesday and Thursday rest days. Although scheduled to work on Friday, January 24, 1986, commencing at 7:20 a.m., Claimant did not report. Claimant asserts that he mistakenly thought that Friday was a rest day for Job 573.

As revealed by the record, Article 30, Section 1-A of the Agreement states:

"Engineers will be called for all service as nearly as practicable one hour and 30 minutes before the time required to report for duty."

hc (2) + Sec # 28
2-8-89

The Carrier's Chief Crew Dispatcher testified that the above provision applies to all regularly assigned yard engineers. In confirmation of that Interpretation, he testified that one of the Carrier's Labor Relations Officers told him several months prior to the incident involved in this case that "unless an engineer so states that they will show, it is required to give them the one hour and thirty minutes call" It is undisputed that Claimant did not make arrangements to report for duty without the benefit of a call. It is further undisputed that Claimant was not given a call 90 minutes before his start time on January 24, 1986.

Under ordinary circumstances we would deny the Claim under Rule 604 which requires employees to report for duty at the designated time and place based upon the undisputed fact that Claimant was obligated to report for work and did not do so in accord with the start time for his bulletined position. But this is not the ordinary circumstance. In accord with Article 30, Section 1-A, at the time the dispute arose the Carrier was required to call Claimant 90 minutes prior to his start time. The Carrier did not do so. Had the Carrier placed the call as contractually required (and as interpreted by the Carrier's Labor Relations Officer), Claimant's misunderstanding of when his rest day was could have been corrected. That clause appears to be a check and balance against the kind of misunderstanding that this record demonstrated.

The quoted contractual language coupled with the Chief Crew Dispatcher's testimony concerning the Interpretation given to him by the Carrier's Labor Relations Officer is sufficient to refute the Carrier's contention that at the time of the incident in this case the practice concerning calls was something different. Further, current practices alluded to in the record are immaterial. By not following the requirement at the time this incident arose for calling Engineers prior to their start time unless the employees indicated otherwise, we must conclude that substantial evidence does not exist in this record to support the Carrier's imposition of discipline.

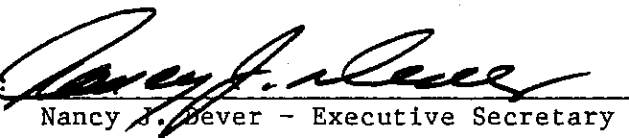
Finally, while the details of the handling on the property are not clear from this record, the parties' submissions indicate that the Claim was handled in a sufficient manner to satisfy the requirements of Circular 1. In the future, the parties are advised to carefully follow Circular 1.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 6th day of February 1989.

FIRST DIVISION
NATIONAL RAILROAD ADJUSTMENT BOARD
January 29, 1988
With Referee Edwin H. Benn

10:00 A.M.

Parties: Brotherhood of Locomotive Engineers
Southern Pacific Transportation Company

DOCKET

43517

REPRESENTATION:

For Carrier:

For Employes:

Leonard A. Foster, General Chairman, BLE