



Award No. 6151
Docket No. 6001
2-BRCofC-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John J. McGovern when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 20, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

THE BELT RAILWAY COMPANY OF CHICAGO

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreement, Committeeman F. Daeschler was unjustly denied pay while attending investigation held during his regular working hours on May 23, 1968, and May 28, 1968.

2. That accordingly the Carrier be ordered to compensate Committeeman F. Daeschler as follows: Two hours and 15 minutes at the pro rata rate of \$3.3548 on May 23, 1968, and six hours and 45 minutes at the pro rata rate of \$3.3548 on May 28, 1968, a total of nine (9) hours at the pro rata rate.

EMPLOYEES' STATEMENT OF FACTS: Under the dates of May 23, 1968 and May 28, 1968, Carman E. Kovalcik (the charged) presented himself at an investigation at the appointed time and place with his designated representative, the duly authorized Committee of Lodge No. 453, composed of Local Chairman L. J. Leach and Vice-Chairman F. R. Daeschler.

This investigation commenced at 10:00 A. M., Thursday, May 23, 1968, subsequently recessed and reconvened at 9:00 A. M. on Tuesday, May 28, 1968, resulting in a total loss of pay for nine (9) hours at the pro rata rate for Committeeman F. R. Daeschler.

The Local Committee of Lodge No. 453 has been compensated by The Belt Railway Company of Chicago while attending investigations for the past nineteen (19) or more years.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the highest designated officer of the carrier, all of whom have declined to make satisfactory adjustment.

The agreement effective September 8, 1950, as subsequently amended, is controlling.

These printed statements give no specifics whatsoever and I stated to the employes that in my opinion they are useless. Certainly, some one of these employes or former employes could have remembered a specific date or a case in which they represented a fellow carman as the duly authorized representative and were paid for such time by the carrier. The carrier was unable to find any record of ever paying a union representative for time spent at a formal investigation. Even if there was a case on this property where a foreman, master mechanic, etc. had paid a local chairman without approval of the officer authorized to interpret the agreement, such erroneous payment does not constitute a precedent nor an interpretation of parties signatory to the agreement.

It is only in "conference" with local officer, i.e., foreman and/or shop superintendent, that the committeeman or local chairman are, or have been, paid during regular working hours. (See Awards 5342, 5371, 4963, 3782, 3783, among others.)

FINDINGS: The Second 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 employe 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.

This is a claim for pay by the Organization. Committeeman as a result of attending an investigation during regular working hours. He attended the investigation as a representative of another employe. The Organization contends that by Carrier refusing to give compensation as requested, they are violating Rule 20 and past practice extending over a period of 19 or more years. The pertinent portion of Rule 20 reads:

"All conferences between local officials and local Committees to be held during regular working hours without loss of time to Committeeman."

The Organization alleges a past practice of rendering compensation for attendance at investigations, whereas the Carrier categorically denies such practice. Ten affidavits have been submitted by employes or former employes of the Carrier in which they state that they have received pay for attending investigations over a period of years. All were members of Garden City Lodge No. 453.

The Past Practice doctrine enunciated in many awards emanating from this Board, is invoked when the language of a particular rule is unclear, imprecise and ambiguous. The pertinent portion of Rule 20 quoted SUPRA, cannot be so characterized. It refers quite plainly to conferences and not investigations. It may well be that payments were made at the local level by local officials, but such action cannot negate, nor render nugatory the plain meaning of the language of the collective bargaining agreement. A

conference is quite different from an investigation and in that record, we associate ourselves with Second Division Award 5342 (Dolnick). We agree with the reasoning contained therein and will deny the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 15th day of June, 1971.