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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6421
Docket No. 6267
2-LV-CM-'73

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

Parties to Dispute:

{ System Federation No. 96, Railway Employees'
Department, A. F. of L. - C. I. O.
(Carmen)

{ Lehigh Valley Railroad Company

Dispute: Claim of Employees:

1. That the Carrier violated the current agreement in refusing to compensate Carmen John R. Shoop, H. Mosley and H. Jabuga for four (4) hours at the straight time rate of pay respectively for service during their off duty hours on Thursday, February 25, 1971.
2. That accordingly the Carrier be ordered to compensate the above named claimants on the call rule basis, four (4) hours at the straight time rate of pay, each respectively, on account of this violation.

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.

Claimants were given notice by Carrier to report for a hearing and investigation which it conducted to determine their responsibility, if any, for a mishap which occurred on February 9, 1971. The hearing was convened on Thursday, February 25, 1971 at 1:00 P.M. and concluded at 2:45 P.M. Claimants' work schedules for the day of the hearing were for hours which did not include the time of the hearing. Following the hearing, Carrier decided not to take disciplinary action against the claimants. They then each filed a claim for four hours straight time pay because the hearing took place during their off duty hours and invaded their rest time.

Petitioner invokes Rule 8 paragraph 4 of the controlling agreement in support of this grievance. Said rule reads as follows:

"4: Employees called or required to report for service and reporting will be allowed a minimum of four (4) hours for two (2) hours and forty (40) minutes or less, and will be required to render only such service as called for or other emergency service which may have developed after they were called and cannot be performed by the regular force in time to avoid delays to train movement."

There is no dispute concerning the fact that a derailment occurred on February 9, 1971 and that same was attributable to a defective part on a freight car. The Carrier apparently considered imposing penalties upon any or all of the claimants if investigation indicated that faulty performance on their part was causally related to the costly misadventure. It proceeded in accordance with Rule 37 of the controlling agreement, the pertinent provisions of which are:

"No employe shall be disciplined without a fair hearing by designated officers of the carrier. ... At a reasonable time prior to the hearing, such employe and his duly authorized representative will be apprised of the precise charge and given reasonable opportunity to secure the presence of necessary witnesses. If it is found that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority rights unimpaired, and compensated for the wage loss, if any, resulting from said suspension or dismissal, less amount earned in other employment."

This Rule limits management's disciplining of employees. It deters summary action and affords workers believed to have been malfeasant or misfeasant an opportunity to defend themselves against charges and is clearly beneficial to them. It is noted that nowhere in this Rule or in any other rule is the time when the hearing shall take place specified nor is compensation for participating therein by those under investigation provided. It is by now well established that appearance at hearings pursuant to rules comparable to Rule 37 does not constitute "service" as contemplated in Rule 8.4 (Awards 1632, 3484, 3492, 3638, 3926, 5870, 5871, 5872). There being no rule in the controlling agreement providing a right to the compensation claimed, we are not empowered to grant same.

A W A R D

Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

E. A. Killian

Executive Secretary

Dated at Chicago, Illinois this 3rd day of January, 1973.