Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 6719
SECOND DIVISION Docket No. 6663
2-BRCofC-MA-'74

The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(The Belt Railway Company of Chicago

Dispute: Claim of Employes:

1. Carrier violated Rule 20 Shop Craft Agreement when they refused to pay Machinist William T. Canny for attending and representing one D. M. Garza on February 4, 1972.

2. Compensate William T. Canny two hours' pay at the pro-rata rate as per custom and practice in the application of Rule 20.

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 ofappearance at hearing thereon.

Employes rely on Rule 20 to support the claim that the Local Chairman be paid for two hours while attending a scheduled investigation as the representative of a charged employe. That rule reads as follows:

"Rule 20 - GRIEVANCES

Should an employe subject to this agreement believe he has been unjustly dealt with, or any of the provisions of this agreement have been violated, the case shall be taken to the foreman, general foreman, master mechanic or shop superintendent, each in their respective order, by the duly authorized local committee or their representative, within fifteen (15) calendar days. If stenographic report of investigation is taken the committee shall be furnished a copy. If the result still be unsatisfactory, the duly authorized general committee or their representatives shall have the right to appeal, preferably in writing, with the higher officials designated to handle such matters in their respective order and conference will be granted within fifteen (15) calendar days of application.

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

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No employe shall be disciplined without a fair hearing by designated officer of the carrier. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. 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."

Employes allege that in every instance prior to February 4, 1971, a Local Chairman at the Clearing Shop, who attended an investigation as a representative of a charged employe was paid for all time spent at the investigation. This long and existing practice gave meaning and intent to Rule 20, which provides that a charged employe is entitled to a representative at the hearing.

Carrier admits that such a practice did exist on a local basis up to 1966. Since then, says the Carrier, all supervisors were advised to discontinue the practice because neither Rule 20 nor any other rule requires the Carrier to compensate the representative attending an investigation. It is not clear whether the prior practice continued after 1966. No affirmative allegations by the Employes that it did continue appears in the record other than the general assertion that the practice continued to February 4, 1971. And Employes' rebuttal sheds no additional light on the subject.

Nevertheless, we shall decide the issue on the assumption that the local practice did exist until February 4, 1971.

Rule 20 does not provide for compensation to authorized representatives of charged employes. It does not even provide for compensation to employes attending an investigation on preferred charges. Compensation is only provided for those attending conferences. If it had been the intent of the parties to compensate representatives attending an investigation in their official capacity they would have so provided. The mere fact that a charged employe is entitled to representation does not imply that such a representative is entitled to be paid for his time at the investigation.

Does then a long established and accepted practice give a different meaning and intent to Rule 20? If the language in that rule is of doubtful meaning and is ambiguous, the practice would be acceptable because it would give meaning and intent to that ambiguous language. But Rule 20 is not ambiguous. The language therein is clear and readily understandable. The common and ordinary meaning of the words therein say nothing of pay to representatives attending investigations. A contrary practice may not supply those words and meanings. Such a practice may not controvene the explicit provisions in Rule 20. It follows that a practice established contrary to such explicit language may be terminated at will.

Employes have cited several awards to support its position that an established practice takes precedence. These are all distinguishable. In Second Division Award No. 1035, the claim was for pay while attending a conference in the Superintendent's office. Rule 32, like Rule 20 in the instant claim, provided that: "All conferences between local officers and local committees to be held during regular working hours without loss of time to the committeemen." That claim was sustained because of the provisions in Rule 32.

In Second Division Award No. 3845 the local practice to pay representatives was never terminated by the Carrier. In stating the facts, Carrier said that the "committee was advised that only the local chairman of the carmen would be allowed pay for time (2½ hours) consumed in the investigation as Rule 34 refers only to 'his duly authorized representative.'" The Award interpreted the language to apply to local committees as well as a single representative.

A similar situation existed in Second Division Award No. 4615 wherein the Carrier contended that their rule contemplated a singular person and not those committeemen who attended the investigation. This Award sustained the claim on the basis of Award No. 3845. Here, too, the Carrier did not terminate a practice prior to the incident of that claim.

Another claim sustained on the findings in Award No. 3845 is Second Division Award No. 5041. In that case the claim was made by two committeemen who attended an investigation. The Carrier in that case stated that their Rule 34 "refers to a singular person, had the opposite been intended the plural word 'representatives' would have been used." And there, too, an existing practice was not terminated.

It should be noted that Awards 3845, 4615 and 5041 are all on the Chicago, Rock Island and Pacific Railroad Company.

In Second Division Award No. 5342 a distinction is made between a "conference" and an "investigation". The former is held to be "an informal meeting of all interested parties to discuss a pending grievance". The rule provided that local officials and committees attending a conference shall do so without loss of time. The claim was for pay to a Local Chairman while attending an investigation as representative of the charged

employe. In denying the claim that Award said: "There can be no inference that similar compensation is to be paid to committeemen and local chairman when they are present at investigations. The contract is clear and unambiguous. We have no right to go beyond it and write a rule which the parties alone must agree to in negotiations."

Second Division Award No. 6151 is on this property and involves the same Rule 20 although the claimants were carmen instead of machinists. There, too, the claim was for pay to a Committeeman while attending an investigation during his regular working hours. There, also, the Employes alleged a past practice similar to the one in the instant case. In denying the claim that award had this to say:

> "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."

On the basis of the better reasoned awards, we conclude that the Carrier did not violate the Agreement and that the claim has no merit.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By _____
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of June, 1974.

G. M. YOUHN

LABOR MEMBERS' DISSENT TO AWARD NO. 6719,
DOCKET NO. 6563

The Referee in Award No. 6719, Docket No. 6563, along with the majority in this instant award, caused gross violence to Rule 20 - Grievances, when they made such an absurd interpretation of the rule by stating:

> "* * * The language therein is clear and readily understandable. The common and ordinary meaning of the words therein say nothing of pay to representatives attending investigations. A contrary practice may not supply those words and meanings. Such a practice may not controvene the explicit provisions in Rule 20. It follows that a practice established contrary to such explicit language may be terminated at will."

Many prior awards of this Board were cited with the Referee which held that where a Rule is either worded ambiguously or silent on a particular issue, then past practice will be a governing factor.

In this connection the record irrefutably showed a past practice of paying representatives attending investigations for as long as this rule has been in effect on the property. The Carrier conceded this as did the Referee in this award, wherein he stated:

> "Nevertheless, we shall decide the issue on the assumption that the local practice did exist until February 4, 1971."

Then, after this admission of fact, the Referee tries to nullify it by the astounding conclusion that the language of

this rule is not ambiguous and/or silent on this compensation issue. He concedes or states in one instance that the rule does not have language on this compensation issue, yet twists this conclusion to mean that compensation was not therefore intended. The Referee chooses to ignore the cited awards that held exactly the opposite, i.e. that past practice prevails when the rule is silent.

For inexplicable reasons of his own, the neutral then has conversely attempted to write into this rule that committeemen will not be paid while performing without a doubt their most important and responsible function of representing charged employes. Many awards, also rules of this Division and laws of the land, properly hold that he is not empowered to do this to rules. Rather than to properly allay, alleviate or settle labor strife, the neutral has herein ignored these proper functions by actually increasing these factors.

The evidence of record extending for many years, both on this property and before this Division, irrefutably portrays that the findings and conclusions of the majority are without reason, common sense and in contradiction to established sound precedents, for which factors we vigorously dissent.

G. R. DeHague, Labor Member

E. J. Haesaert, Labor Member

E. J. McDermott, Labor Member

D. S. Anderson, Labor Member

W. O. Hearn, Labor Member