Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6949
Docket No. 6825
2-L&N-MA-'75

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(Louisville and Nashville Railroad Company

Dispute: Claim of Employes:

(a) That under the current Agreement, Machinist D. C. Wells, hereinafter called the Claimant, was not fully compensated for time lost from work due to jury duty on October 16, 17, 18, 23, 24, 30, 31 and November 1, 1973, three (3) hours per day for a total loss of time of twenty-four (24) hours

(b) That Carrier be ordered to pay the Claimant regular rate of pay for time lost due to jury duty.

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.

Claimant herein was called for Jury Duty on each of the Claim dates and served for varying periods of time each day. On the first three days he was required to report for Jury Duty at 8:30 A.M. and on the remaining five days at 10:00 A.M. His regular assignment was a a machinist in Carrier's South Louisville Shops, with hours of 7:00 A.M. to 3:30 P.M. The National Mediation Agreement of September 2, 1969 provided, in pertinent part, as follows:

"Article III Jury Duty

When a regularly assigned employee is summoned for jury duty and is required to lose time from his assignment as a result thereof, he shall be paid for actual time lost with a maximum of a basic day's pay at the straight time rate of his position for each day lost less the amount allowed him for jury duty service for each such day..."

Claimant alleges that he was shorted twenty four hours pay in the above period whereas Carrier maintains that he was paid eight hours for the first three days of Jury Duty and three hours were deducted for each of the last five days when he reported for such duty at 10:00 A.M.

The Carrier maintains that Claimant could have gone to work on the days he did not report for jury service until 10:00 A.M. and could have worked until 8:30 or 9:00 A.M. which would still have allowed him sufficient time to report for his Jury Duty. Carrier states that there was nothing unusual in the manner in which Claimant's case was handled. Furthermore, Carrier asserts that Claimant was instructed by his supervisor to report for work prior to his jury service. Carrier states that Claimant was properly compensated for the days in question.

In view of the questions being raised by its employees at Carrier's South Louisville Shops and since the Mediation Agreement, supra, did not specify when an employee would be released for Jury Duty, Carrier posted a Bulletin notice on May 25, 1974 setting forth what it considered a reasonable application of the rules. Although this Carrier interpretation was not in effect at the time of the claim herein, it has relevance in terms of the attempt to set a standard and provides as follows:

"BULLETIN BOARD NOTICE

EMPLOYEES - SOUTH LOUISVILLE SHOPS:

SUBJECT: JURY DUTY

Article III of the Mediation Agreement of September 2, 1969 provides, effective as of January 1, 1970, that when a regularly assigned employee is summoned for jury duty and is required to lose time from his assignment as a result thereof, he will be paid for actual time lost with a maximum of a basic day's pay at the straight-time rate of his position for each day lost.

As a reasonable application of this rule, the following will govern:

First Shift

When an employee is called for jury duty in Jefferson County, Kentucky or Clark County, Indiana more than three hours after the starting time of his assignment, he will report for work on time and will be released one hour and 30 minutes before the time he is required to report for jury duty. An employee who is called for jury duty outside of Jefferson County, Kentucky or Clark County, Indiana will not be required to report for work until he is released from jury duty for the day.

When an employee is released from jury duty for the day three hours or more before the quitting time of his assignment, he will be expected to return to work and will be allowed not to exceed one hour and 30 minutes to return.

Second Shift

"If an employee is released from jury duty too late to report for work on time, he will report as soon as possible.

Third Shift

An employee is not required to report for work on this shift ending on the day called to perform jury duty. He will be required to report on time for work on the day released from jury duty if that is a day of his assignment.

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When an employee is called for jury duty, he should request the clerk of the court to fill out the L&N Form LA-564, showing time called for jury service and the time released. If the clerk refuses, the employee should advise his supervisor on duty of the clerk's refusal, and he should also advise the supervisor of the time called and the time released.

Please be governed accordingly.

E. O. ROLLINGS, MANAGER"

Petitioner states that the rule set forth in the Mediation Agreement did not contemplate the necessity for an employee to report to work for a few minutes prior to going for his jury service. Claimant alleges that he could at most have worked for 25 to 30 minutes before having to go home to change clothes and get to the court house on time; he was subject to a $30.00 fine for being late. Petitioner states that they had objected to the bulletin promulgated by Carrier on May 25, 1974 as representing a change in the rule. However, Petitioner alleges that by the very terms of that Bulletin Claimant should have been paid as claimed since he was not called for jury duty more than three hours after the starting time of his assignment and hence should not have been required to report for work.

We are asked in this dispute to determine what is a reasonable standard for interpreting the Mediation Agreement pertinent provision insofar as this Claimant is concerned. It is clear that under the Bulletin quoted above the Claim would be payable; however the content of the Bulletin was never negotiated and the Organization never agreed to it (and it was not meant to be retroactive). We cannot write a new rule for the parties since that function must be left for their negotiation. Additionally, the question of what are reasonable standards involves many situations which we are not privy to: e.g. different physical locations of employees and court houses; work clothes differ for clerks as compared to shop employees, etc. Although it appears to

be reasonable, we are not making any judgment with respect to the Bulletin above. With respect to the facts in this particular claim, in view of the rule, we find that Claimant should not have suffered any loss in compensation for serving on the jury under all the circumstances herein. Therefore the Claim will be sustained and Claimant will be made whole for any loss in pay suffered under the rule in question.

A W A R D

Claim sustained; Claimant shall be made whole as provided in Article III of the Mediation Agreement of September 2, 1969.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of September, 1975.