

The Second Division consisted of the regular members and in addition Referee Arthur T. Van Wart when award was rendered.

Parties to Dispute: (System Federation No. 16, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That under the current working agreement Carmen J. L. Abbott and A. W. Smith were unjustly dealt with when carrier declined to compensate them for performing duties as instructed outside of their regularly assigned bulletined hours on November 19, 1975.
2. That accordingly carrier be ordered to compensate Carman J. L. Abbott and A. W. Smith for three (3) hours each at the time and one-half rate for November 19, 1975.

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 employed as Carmen on the second shift at Carrier's Indianapolis terminal. They were each notified to attend a formal investigation held to determine their respective responsibility in connection with the unauthorized removal of merchandise from two box cars on October 4, 1975. The investigation commenced at 9:08 a.m. and ended at 11:43 a.m. on November 19, 1975. Claimant Abbott had been off on his rest day while Claimant Smith was not yet on duty on November 19, 1975. As a result of the evidence adduced at the investigation, Carrier concluded that they should be absolved of any responsibility. Therefore, no discipline was assessed and Claimants were so notified. They each filed claim for three and one-half ($3\frac{1}{2}$) hours at overtime rate on the premise that each performed service and had to forego part of his off duty time and that Rules 5 - "Overtime" -, 6 - "Overtime" and 33 had been thereby violated. Rule 33 provides:

"An employee shall not be discharged for any cause without first being given an investigation. If it is found that an employee has been unjustly discharged or dealt with, such employee shall be reinstated and shall be compensated for the wage loss, if any suffered by him, the compensation earned by him in outside employment in the meantime shall be taken into consideration in determining the wage loss."

Rule 33, in contractually limiting the inherent right to arbitrarily issue discipline, imposed an obligation on Carrier to first hold an investigation. This deterrent to summary Carrier action was seen as being of mutual benefit. The Rule clearly provided for compensation only if discipline had been imposed, that there had been a wage loss suffered as a result thereof and that the appellant handling of the discipline assessed resulted in the conclusion that said discipline was unjust. The three conditions stipulated in the rule are not met by the facts of this case. Consequently, Rule 33 provides no support for the instant claims.

It had been long held that attending an investigation is not performing service for the Carrier. (See Awards 1632, 3484, 3492, 3638, 3426, 5870, 5871, 5872 and 6421.)

As pointed out in Third Division Award 21320 (Dorsey):

"In the absence of a specific provision in an Agreement that a charged party shall be paid for attendance at a discipline investigation hearing it is the practice in the railroad industry that the employee is not contractually entitled to pay for time in attendance at the hearing...."

Absent a supporting rule this claim will be denied.

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 19th day of September, 1978.