

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 8690
Docket No. 8522
2-SLSW-MA-'81

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: { International Association of Machinists and
Aerospace Workers
{ St. Louis Southwestern Railway Company

Dispute: Claim of Employees;

Part I: GRIEVANCE - Under Rule 22 of the Agreement effective November 1, 1953, as amended, wherein the St. Louis Southwestern Railway Company assessed Grievant, Machinist R. M. Harris thirty (30) demerits against his personal record for allegedly being insubordinate.

And, accordingly, Grievant's personal record should be cleared of all alleged charges.

Part II: Claim for five hours fifteen minutes at the pro rata rate of pay in favor of Machinist R. M. Harris for Carrier's violation of Rules 1-2 (a), 3-1, 4-2, 4-7 (a), 5-2 and 100 in the controlling Agreement.

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.

The Organization argues that the investigative hearing provided in this dispute did not meet the requirements of being "prompt", as the Organization alleges is required under Rule 24. The hearing was held 16 days after the incident in question. The Board does not find this violative of Rule 24, nor did the timing of the hearing (or the apparent mix-up as to a proposed postponement) adversely affect the Claimant in his right to defend his position.

Following the hearing, the Claimant was given 30 demerits on a charge of "being insubordinate when you left company property after your supervisor instructed you to the contrary". Review of the records by the Board shows that this charge is not in fact supported by the testimony. Claimant requested permission to go "to town" during his meal period. It was this request which was denied. There is no evidence that Claimant went "to town" in defiance of his supervisor. The best evidence is that, instead, he went to "the hump" and the "rip track" to obtain coffee and that doing so was not contrary to any supervisory

order. On his return trip the record shows he was apparently off the Carrier's property, but there is no proof to contradict the Claimant's statement that this was accidental and even unknowing, incident to his returning from "the hump". Based on any reasonable reading of the hearing record, the Carrier has failed to meet the burden of proof required in such cases.

The Organization also claims pay for the employee because he was "directed" to appear at an investigative hearing and was not compensated for such time. None of the rules cited in the claim bears directly on this issue. Nor does Rule 22, Grievances, specify pay for employee attendance at an investigative hearing. There is some reference to no loss of pay for "up to three committeemen" in conference; this cannot be stretched to include the Claimant. Absent specific rule provision to the contrary, attendance at any investigative hearing cannot be defined as working time -- regardless of whether the employee under investigation is found guilty or innocent of the charge being investigated.

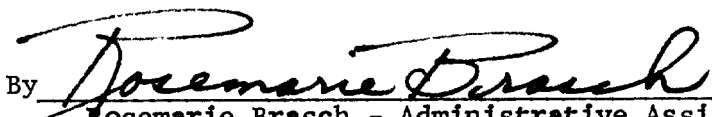
A W A R D

Part I of claim sustained.

Part II of 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 29th day of April, 1981.