

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International Association
(St. Louis-San Francisco Railway Company

Dispute: Claim of Employees:

1. That the St. Louis-San Francisco Railway Company violated the controlling agreement, particularly rule 7½ when they arbitrarily refused to compensate Sheet Metal Worker T. F. Fox for three (3) days jury duty beginning March 1, 2, 3, 1978.
2. That accordingly, the St. Louis-San Francisco Railway Company be ordered to compensate Sheet Metal Worker T. F. Fox twenty-four (24) hours at the pro rata rate of pay for such 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.

Claimant, a sheet metal worker, was regularly assigned to the 4:00 p.m. to midnight shift. On March 1 and 2, 1978, pursuant to a court summons, the claimant was serving on a jury until 5:00 p.m. and on March 3, 1978 he served until 8:30 p.m. Claimant did not report to work on March 1, 2 or 3, 1978. The organization filed this claim on his behalf for twenty-four hours of pay at the straight time rate.

The relevant portions of Rule 7 1/2 of the applicable agreement state:

"Jury Duty

Rule 7 1/2. When a regularly assigned employe 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 service for each such day, excepting allowances paid by the court for meals, lodging or transportation subject to the following qualifications, requirements and limitations.

"(1) An employe must exercise any right to secure exemption from the summons and/or jury service under federal, state or municipal statute and will be excused from duty when necessary without loss of pay to apply for the exemption.

(2) An employe must furnish the carrier with a statement from the court of jury allowances paid and the days on which jury duty was performed..."

The organization contends a reasonable interpretation of Rule 7 1/2 manifests that claimant is entitled to a day's pay for each day he served on the jury of the Circuit Court for Greene County, Missouri. According to the organization, Rule 7 1/2 would have used the words "hours lost" rather than "day's pay" if the rule was intended to compensate employes only for the time their jury service precisely coincided with their assigned shift. The carrier raises a threshold argument that this claimant is not entitled to any compensation because he failed to comply the requirements set forth in Part (2) of Rule 7 1/2. Assuming the claimant is qualified to receive compensation for jury service, the carrier urges us to limit the compensation to nine hours thirty minutes since claimant could have reported for the remainder of his shift on the three dates in question. (The nine and one-half hours includes one hour each day for traveling from the courthouse to the carrier's shop. The organization replies by saying claimant was tired after serving on a jury all day and thus he cannot be expected to report to work on the days he was required to serve on the jury. Also, the organization argues that the carrier's interpretation of Rule 7 1/2 places the claimant (and other second and third trick employes) in an inequitable position relative to first shift employes.

Rule 7 1/2 clearly states that where an employe is required to lose time due to jury duty, "... he shall be paid for actual time lost..." up to a full day's pay. This language is subject to only one reasonable interpretation. The claimant is entitled only to compensation for the period his jury service actually coincided with his scheduled work hours. Second Division Award No. 6295 (Bergman). Our authority is confined to interpreting the contract and so we lack the power to alter a rule which when applied might cause inequities among classes of employes. Third Division Award No. 6828 (Messmore). The parties have negotiated this particular language and it is not our province to amend or rewrite the rule merely to avoid what might appear to be an inequitable or unfair result. Third Division Awards No. 18143 (Dorsey) and No. 20844 (Norris). Therefore, if claimant is entitled to any relief, his compensation must be limited to his actual time lost which was nine hours thirty minutes.

The record contains a written statement that the claimant procured from the court which verifies the dates and times the claimant was serving on the jury. At the time the claimant asked the court to provide the statement, both the carrier and the claimant were concerned with proof that the claimant was truly engaged in jury duty on the three days. Thus, the claimant has partially complied with Rule 7 1/2 (2). However, the rule also requires the claimant to present a statement from the court setting forth any jury allowances he received (less allowances paid for meals, lodging or transportation).

We rule that because Rule 7 1/2(a) is silent as to when Claimant may submit a statement of jury allowances, the claimant has not yet forfeited his right to receive compensation for jury duty. Therefore, if the claimant obtains a statement from the court describing the amount of jury allowance he received (for purposes other than meals, lodging and transportation) and presents the court statement to the carrier within ninety days of the date of this award, the carrier shall pay the claimant nine hours and thirty minutes of wages at the pro rata rate less the amount of the jury allowance, if any, as specified by the court.

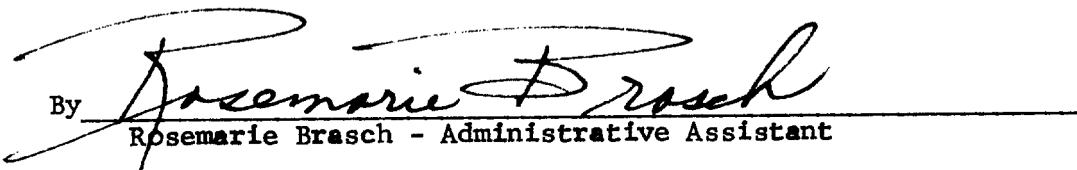
A W A R D

Claim sustained but only to the extent consistent with our findings.

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 10th day of November, 1981.