

The Second Division consisted of the regular members and in addition Referee Gilbert H. Vernon when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
and Canada
(Louisville and Nashville Railroad Company

Dispute: Claim of Employes:

1. That the Carrier improperly "docked" Committeemen M. T. Blaker and J. D. Loftin, 45 minutes each on October 20, 1978, when they attended a Conference in line with Rule 32 (b) of the Controlling Agreement.
2. Request that the Louisville and Nashville Railroad compensate Committeemen M. T. Blaker and J. D. Loftin 45 minutes each at the straight time rate for time "docked" on October 20, 1978.

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.

This claim involves the interpretation and application of Rule 32 and Rule 36. They read as follows, in pertinent part:

"Rule 32. GRIEVANCES

(a) 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 handled in accordance with the provisions contained in Appendix 'D', Article V, by the duly authorized committee or their representative. If a stenographic report of investigation is taken the committee shall be furnished a copy. If the result still be unsatisfactory, the duly authorized representative shall have the right of appeal, preferably in writing, with the higher officials designated to handle such matters in their respective order and conference will be granted within 15 days of application unless otherwise agreed upon.

(b) All conferences between local officials and local committees will be held during regular working hours without loss of time to committeemen or employes represented."

"Rule 36. COMMITTEES

The Company will not discriminate against any committeemen who are delegated to represent other employes and will grant them leave of absence and free transportation subject to the provisions of Rule 44."

The claim involves the Claimants, local committeemen, who were docked for time that they spent away from duty while discussing certain matters with local supervision. The subject of the conference is disputed. The Organization contends in their submission the matters under discussion were "claim (sic) grievances, vacation assignment matters, and other miscellaneous matters..." The Carrier contends that the purpose of the conference was "... to assign vacations for the next year (1979)." There is no dispute regarding pay for the local chairman for attending this meeting.

The Organization takes the position that the Carrier's action violated Rule 32 (b) and Rule 36. They argue that Rule 32 (b) refers to committees and committeemen in the plural sense therefore more than the local chairman should be allowed to attend without a reduction in pay. Further, they contend that the matters discussed were clearly covered by Rule 32. In support of their position they submit 18 affidavits signed by a large number of employees attesting to the following:

"... no Committeemen (Local Chairman, Vice Local Chairman, or Secretary) while on duty during their regularly assigned work hours were ever 'docked' for representing fellow employes in Conferences where the subject matter was claims, grievances, local problems involving vacation scheduling, overtime assignments or other matters of controversy. It has been the Companys historical past practice to never deny or 'dock' the members of the Committee during their on duty hours."

The Company first argues that the claim is unsupported because the annual scheduling of vacations is not a grievance. Rule 32 does not require that all conferences must be held during working hours, only those relating to grievances as the title of the rule and paragraph (a) suggest. On a second level of analysis the Carrier contends that the rule must be read in light of the fact that the entire agreement is between the Carrier and five different shop craft unions. The Agreement of which rules 32 and 36 are a part, is signed and applicable to not only the Carmen's Organization but to four others. They suggest that the term "committee" or "committeemen" refers not to a committee or several committeemen of a single Organization but to a committee, comprised of one representative from each of the crafts, that negotiated the multicraft contract. In this regard, pay for conferences only extends to the local chairman of each craft as he is the craft's member on the "committee" as the term is used

in the Agreement. The Carrier also introduces as evidence a Section 6 notice dated August 7, 1978. It can be inferred from the submission that they suggest this Section 6 notice, inasmuch as it is a request for a rule change, should be taken as evidence that the present Agreement does not grant them the privilege they now seek before the Board.

The Organization objects to the introduction of the Section 6 notice and the argument regarding it as new evidence. They request the Board not to consider this evidence as it is in violation of the Board's Circular No. 1. In reviewing the record, we do not find any evidence in the record of correspondence which indicates this evidence and argument was handled on the property, therefore will not consider it. Even if we were we don't believe it would be necessarily relevant as it seems to deal with investigations and not grievance conferences.

The first task of the Board is to decide exactly what the nature and purpose of the conference in question was. The differences, as to the content of the meeting as described in the submissions, were reviewed above. In an attempt to reconcile the two different views we reviewed the correspondence and discovered the following statement by the General Chairman:

"This is to advise that the sole purpose for the conference was to discuss the vacation assignments and scheduling for the upcoming year 1979."

In view of the above, we see the issue as a narrow one, that is whether Rule 32 or 36 require the Carrier to pay committeemen such as the Claimants for attending a conference whose purpose was scheduling vacations. In reviewing the competing arguments, we cannot conclude that the contract requires the Carrier to compensate the Claimants under these circumstances. The language is clear as it relates to grievances and does not mention or intimate that the joint scheduling of vacations is subject to the requirements of Rule 32(b). In respect to the statements of past practice submitted by the Organization even they are non-specific in respect to the scheduling of vacations. The statements only mention problems involving vacations not vacation scheduling per se. It must be recognized that a distinction between the two to the extent that the rule applies is possible. There is arguably a difference between a conference where the parties sit down together as a matter of cooperation and develop a vacation schedule that is satisfactory to all concerned and a meeting where a grievance regarding when a vacation was scheduled is discussed.

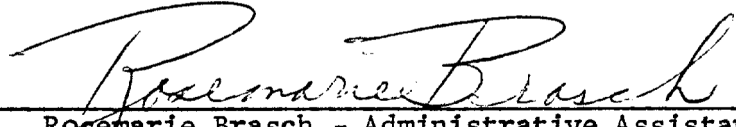
In summary, because the language of Rule 32 and the past practice cannot be related to the specific factual situation involved here, we must deny the claim.

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 14th day of April, 1982.