

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

Parties to Dispute: (System Council No. 27, International Brotherhood
(of Electrical Workers
(
(Southern Pacific Transportation Company
((Texas & Louisiana Lines)

Dispute: Claim of Employees:

1. That the Southern Pacific Company (Texas & Louisiana Lines) erred when they required, Electrician R. L. Hawkins to check out from his regular assigned duties and lose pay on December 18, 1979, when he as Local Chairman represented Electrician T. G. Odell at an investigation held on December 18, 1979.
2. That accordingly, the Southern Pacific Company (Texas & Louisiana Lines) be ordered to reimburse Electrician R. L. Hawkins seven (7) hours pay at \$9.27 per hour for December 18, 1979.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 Claimant is a Local Chairman who represented an employee at a properly scheduled investigation. In doing so, the Claimant was required to check out from his regularly assigned duties and thereby did not receive pay for the time appearing as a representative when he otherwise would have been at work and under pay.

The Organization asserts that, under Rules 32 and 34 and as well as in accordance with past practice, the Claimant was entitled to pay for time lost while performing representational responsibilities at the investigation.

Rule 32 is entitled "Time Claims and Grievances" and includes the following:

"(h) All conferences between local officers and local committees to be held during regular working hours without loss of time to the committeemen."

Note that this provision not only provides for no "loss of time", but also dictates when "conferences" are to be held ("during regular working hours").

Rule 34 is entitled "Discipline -- Investigations" and is clearly a separate rule from Rule 32. There is no reference to pay for lost time for representatives in Rule 34 nor any limitation as to the precise time of the investigation.

The Carrier asserts that no payment for lost time is required, since no such pay is specified in Rule 34, and the Organization concurs that no such language is included. The Organization argues, however, that Rule 34 is "enhanced into" Rule 32 and reference to payment in Rule 32 applies also to Rule 34.

The question of the definition of "conference" and "investigation" has been reviewed in numerous previous awards. Given the precise language of Rules 32 and 34 on this property, the Board finds that there is a distinction and agrees with the findings in Award No. 5342 (Dolnick), which states in part:

"An 'investigation' is not a 'conference'. The former is a formal proceeding conducted to ascertain the facts relating to a specific charge. Witnesses for the Carrier and for the charged employee testify and are cross-examined. The entire hearing is formal; objections and rulings are made. A record of fairness and impartiality must be established. A 'conference' is an informal meeting of all interested parties to discuss a pending grievance. It is in this context that 'conference' is used in Rule 36 which deals with the subject of grievance handling. The only reference in that rule to an investigation is the provision obligating the Carrier to furnish the local committee with a copy of the transcript if a stenographic report is taken. It is only in such a 'conference' that the committeemen or local chairmen are paid for attendance during regular working hours. There can be no inference that similar compensation is to be paid to committeemen and local chairmen when they are present at investigations. The contract language is clear and unambiguous. We have no right to go beyond it and write a rule which the parties alone must agree to in negotiations. Further, this subject has been ruled on in Second Division Awards 4363 and 5013, and we see no justification to hold otherwise."

This reasoning is affirmed in Award No. 6151 (McGovern) and Award No. 6719 (Dolnick).

The Organization points to a contrary finding in Award No. 8141 (Scearce). In that instance the applicable Rule 32 (Grievances) contains identical language as here. However, in the Rule 34 discussed in Award No. 8141, there is a sentence, reading as follows, which does not appear in the Rule 34 under consideration here:

"The Company will not discriminate against any committeemen who, from time to time, represent other employees, and will grant them leave of absence and free transportation when delegated to represent other employees."

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Award No. 9102
Docket No. 8907
2-SP-EW-'82

Payments to employees must necessarily be provided by rule; they cannot be created by implication.

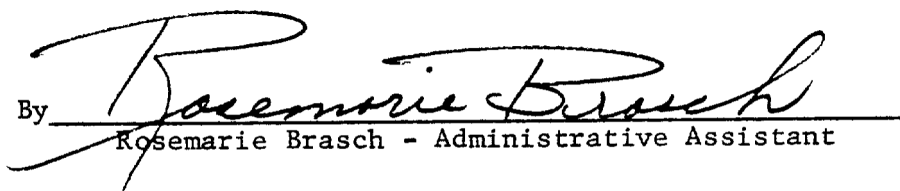
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 2nd day of June, 1982.