

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10865
Docket No. 10124
2-SP-SMW-'86

The Second Division consisted of the regular members and in addition Referee Steven Briggs when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International Association
(
(Southern Pacific Transportation Company (Western Lines)

Dispute: Claim of Employees:

1. That the Carrier violated Rules 39 and 41 of the current Motive Power and Car Department Agreement and the past practice of many years, in addition to Section 8(e) of the Occupational Safety and Health Act.
2. That the Carrier compensate claimant M. J. Denny for 6 hours pay at straight time rate for 6 hours spent while accompanying OSHA Representative on walk-around inspection of the Plant, during his regular assigned hours.

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 employees 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 the Local Chairman at the Carrier's Sacramento, California Locomotive Works. On January 21, 1982, at 9:00 A.M., he attended a meeting in the office of Works Manager J. R. Allen concerning Safety Conditions at the facility. Several Carrier Officials and Representatives of other crafts were present, as were agents of the California State Occupational Safety and Health Administration (Cal OSHA). An attorney, representing Cal OSHA, presented the Carrier with an Inspection Warrant and announced that a walk-around inspection of the facility would commence immediately.

Carrier Administrative Manager D. M. Fitzpatrick stated during the meeting that any Committeemen wishing to accompany Cal OSHA Representatives on the Inspection would not be paid for the time it took. He instructed them to clock out before beginning the tour. All Committeemen present, including the

Claimant, clocked out and spent six hours inspecting the facility with Cal OSHA Representatives. The Claimant felt he should have been paid at straight time for his participation in the inspection, and filed a Claim for six hours' pay.

The Carrier contends that the Claim is procedurally defective since it was filed before a conference was held on the property. The Carrier also maintains that since the Claim involves interpretation of the Federal Occupational Safety and Health Act, as opposed to Interpretation of a Railway Labor Agreement, the Board has no jurisdiction to decide the matter. With regard to the merits, the Carrier notes that there is no evidence to sustain the allegation that Rules 39 and 41 of the current Agreement have been violated. Finally, the Carrier holds that it did not request the Claimant to accompany Cal OSHA Representatives on the tour and, therefore, has no obligation to pay for time spent on same.

The Organization argues that the Carrier violated Rule 39 when it deprived the Claimant of six hours' pay without a fair Hearing and that it violated Rule 41 since the Claimant is a Committeeman. Moreover, the Organization notes that in 1975 and 1979 a Local Chairman was paid by the Carrier for accompanying an OSHA Representative on a walk-around inspection. Finally, the Organization maintains that Section 8(e) of the Occupational Safety and Health Act was violated as well.

Careful study of the record does not support the Carrier's procedural argument. The General Chairman and the Carrier's Labor Relations Officer held a conference on December 20, 1982, to discuss the Claim. The Organization appealed to this Board by a letter dated that same day. Even though the Carrier did not mail its written confirmation that the Claim was denied until December 23, 1982, this Board concludes that the actual date of denial was indeed December 20.

We do agree with the Carrier, however, that Interpretation of the Occupational Safety and Health Act is beyond our jurisdiction. Numerous Awards in the Second and other Divisions are supportive of this conclusion (see Second Division Awards 9321, 6462; Third Division Awards 14745, 15143, 17627; First Division Award 6101).

Turning to the merits of the matter, we find no violation of Rule 39, quoted in part below:

"DISCIPLINE--SUSPENSION--DISMISSAL

"Rule 39. No employe shall be disciplined or dismissed without a fair hearing by the proper officer of the Company. Suspension in proper cases pending a hearing which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employe shall in writing, be apprised of the precise charge against him, be given reasonable opportunity to secure the presence of necessary witnesses, and shall have the right to be represented . . ."

There is simply no evidence that the Claimant was disciplined in any way. Therefore, we find that Rule 39 is not applicable.

Rule 41 states:

"COMMITTEEMEN

"Rule 41. The Company will not discriminate against any Committeeman who is delegated to represent employees covered by this Agreement, and for that purpose will grant leave of absence and free transportation, when not contrary to State or National Laws or pass regulations".

We find no evidence of record to support the Organization's allegation that Rule 41 was violated. That is, we are not persuaded that the Claimant was denied pay on the basis of his Committeeman status while other employees who do not serve in that capacity were treated differently.

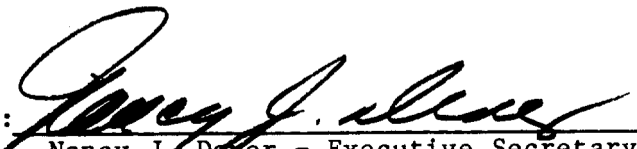
Finally, the Board finds no valid past practice to support the Claimant. The Organization alluded to two prior instances (1975 and 1979) where a Local Chairman was paid for accompanying an OSHA Representative on an inspection tour, but those cases are distinguishable. In the instant case, the Claimant was not directed by the Carrier to accompany the OSHA Representative. The Carrier permitted him to do so voluntarily, and even then only after instructing the Claimant to clock out first. In the two cases characterized by the Organization as a valid past practice, the Carrier had apparently directed a Local Chairman to go on an OSHA Inspection Tour.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois this 4th day of June 1986.