

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

1. That in violation of the current Agreement and recognized terms of implied contract, Electrician M. F. Pickinpough was denied eight (8) hours' compensation for date of April 20, 1987.

2. That accordingly, the Burlington Northern Railroad be directed to compensate Electrician Pickinpough eight (8) hours' pay for the subject date.

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.

Through his attorney, Claimant made arrangements to meet with the Carrier's attorney in Scottsbluff, Nebraska (Claimant's residence) to give a deposition at 11:00 A.M. on April 20, 1987. That meeting was delayed and Claimant waited until around 1:30 P.M. for the meeting to begin. The meeting ended at around 4:30 P.M. and the Claimant left. His regular assigned work shift was from 3:30 P.M. to 11:30 P.M. at Alliance, Nebraska, some sixty miles away. Claimant did not report to work.

It is the position of the Organization that the Carrier had assured Claimant that he would be compensated for the work day lost as the result of the Carrier's requested meeting. In support of the Claimant the Organization also points out that the Claimant was nearly sixty miles from the workplace, lacked transportation, was performing a Carrier request in his presence and would not have been able to work more than a few hours if he had been able to report. The Organization argues that Carrier violated Rule 1, when they failed to allow Claimant his required forty hour work week and Rule 19, when they failed to properly reimburse Claimant for the deposition given.

Carrier challenges the Organization's position in all respects. The Carrier maintains that the Claimant was never informed that he would be compensated for the work day lost, but only for time lost while giving the deposition. Claimant was compensated with four hours from 3:30 P.M. to 7:30 P.M. As the deposition ended at 4:30 P.M., this would have allowed Claimant time enough to return home, change clothes and attend to the remainder of his work shift. As for the Claimant's lack of transportation, Carrier argues that "he should have made other arrangements to protect his assignment...." It denies any violation of the Agreement.

In the instant case the probative evidence supports the Carrier's position. Rule 1 defines the five day, forty hour work week and does not contain provisions which guarantee or relate to the instant case. It is neither applicable, nor violated by the facts herein before us. Rule 19 refers to attending court and being a witness for the Carrier. This Rule is also not applicable nor violated in this case as the Claimant neither attended court, nor was a witness for the Carrier. Neither these Rules nor other Rules raised ex parte apply in these circumstances.

Our review of the evidence focuses upon the two attorney letters which show that the Claimant was never explicitly told that he would be paid for the entire work day, which is the Claim at bar. Carrier's attorney states that this did not occur and the Claimant's own attorney confirms that he was assured that if Claimant did not report to work on time "he would be paid for his lost wages." Claimant's attorney admits that he made assumptions about what this meant, that there was a "loose knit discussion" and that there was no "definitive" statement made. Carrier's position is further upheld by noting that the Claimant had a vehicle available to him. Even further, Claimant was allowed four hours pay by the Carrier for his time (by agreement between the attorneys).

The Board denies this Claim noting that the Claimant appeared for a deposition in his own claim against the Carrier and thereby mutually benefited from the meeting (Third Division Awards 21267, 22704, 20707). Finding no Rule violated and that the burden of proof upon the Claimant to substantiate his charge that he was promised payment for a full days work was not met, the Claim is denied.

A W A R D

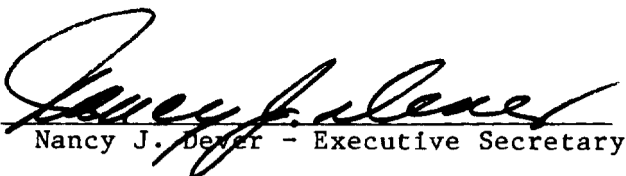
Claim denied.

Form 1
Page 3

Award No. 11858
Docket No. 11601
90-3-88-2-91

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May 1990.