

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13461
Docket No. 13355
99-2-98-2-41

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

**(Brotherhood Railway Carmen, Division of Transportation
(Communications International Union**
PARTIES TO DISPUTE: (
(The Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

- 1. That the Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 13.3 when they failed to compensate Carman and Duly Accredited Representative William Fulton for 4.5. hours at the straight time rate when he attended an investigation on behalf and at the request of Carman Richard A. Dixon on February 14, 1997.**
- 2. That, accordingly, the Springfield Terminal Railway Company be ordered to compensate Carman William Fulton in the amount of 4.5 hours (72.58) for his attendance and representation of an employee at this investigation. This is the difference in what he was paid and what he was entitled.”**

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 were given due notice of hearing thereon.

This dispute involves the word "local" and how the parties interpret it.

The dispute arose when one Local Chairman was cited for an Investigation and he requested, as his duly accredited representative, the Local Vice Chairman of a lodge (there are only two lodges) located approximately 200 plus miles from the site of the Investigation.

Rule 13.3 reads, in pertinent part:

". . . If the hearing is scheduled during the duly accredited local representative's regular working hours, he will be allowed time without loss of pay to represent employees . . ."

The word "local" is defined by the Carrier as the representative headquartered at the site of the Investigation. Since Claimant was not "local" in their view, they should not have paid him for time spent in the Investigation, but they did. This act of payment is to this Board, contrary to Carrier's argument in regards to the Rule. Only a duly accredited local representative will be paid for the time. Claimant was either the duly accredited local representative, or he was not. If he was, the Rule is to reimburse him for time lost. If not, he was not entitled to any pay, at least, in accordance with Carrier's argument. Furthermore, the Organization argued that shortly after the Rule was in place, a situation identical to that we are here concerned arose and Claimant was paid the full eight hours he lost.

The Carrier responded by stating that local management made the payment without Labor Relations input, thus their actions were not indicative of the manner the Carrier interprets the Agreement.

If there was nothing further in the record than that discussed here, this Board would readily adopt Award 8 of PLB 5860 involving the same Carrier, identical contract language, albeit another craft, who supported Carrier's refusal to pay the duly accredited local representative for any and all time lost because he was headquartered

some 280 miles from the Investigation site. He was not “local.” But in this dispute, another element has been introduced that adds weight to the Organization’s argument that “local” was in reference only to non-employees of the Carrier. This added argument was contained in two statements from the Organization’s two local representatives who were present during the negotiations. Note one such statement that reads:

“The Carrier negotiators were concerned with the language of Rule 13 in that they did not want to pay a Duly Accredited Representative from outside of the employ of STRR such as a General Chairman or Local Chairman who works either as a full time Union Representative or for another company. The Carrier Negotiators insisted that the words Local Duly Accredited Representative be used so that only representatives who work for STRR will be paid to represent carmen. It was not intended to relieve the Carriers obligation to pay any Carman Duly Accredited Representative employed for STRR to represent any carmen on the STRR system.”

The Organization’s letter to the Carrier was dated a scant eight days prior to the date this case was docketed with the Second Division, it was presented in the on-property handling. The Carrier entered no objection nor rebuttal to the Organization’s position.

Under these circumstances, when assertion of facts stand unrebutted, the word assertion is eliminated and it becomes fact.

AWARD

Claim sustained.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 28th day of September 1999.