

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13572

Docket No. 13408

00-2-98-2-97

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Brotherhood Railway Carmen Division
(Transportation Communications International Union**
PARTIES TO DISPUTE: (
(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 eight (8) hours at the straight time rate when he attended an investigation on behalf of and at the request of Carman James P. Besemer on September 25, 1997 in Lowell, MA.**
- 2. That, accordingly, the Springfield Terminal Railway Company be ordered to compensate Representative William Fulton in the amount of eight (8) hours pay for his attendance and representation of an employee at his investigation.”**

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 claim protests the Carrier's refusal to compensate the Claimant, Vice Local Chairman, Lodge 6315, employed in East Deerfield, Massachusetts, for the time spent in traveling to, and attending, an investigation conducted during his regular working hours on September 25, 1997 in Lowell, Massachusetts, on behalf of a Lowell Carman who had requested the Claimant to represent him at the Investigation. It involves the application of the following highlighted language of Rule 13.3, newly negotiated into the parties' December 3, 1995 Agreement:

"13.3 . . . The employee will have the right to be represented by a Duly Accredited Representative of his own choosing. . . . 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 record reflects that the Organization has two local lodges covering three points on the Carrier's system. Waterville, Maine, is identified by Local Lodge 6923 whose Local Chairman is Richard Dixon. East Deerfield and Lowell, Massachusetts, (approximately 60 miles apart) are covered under Local Lodge 6315, whose Local Chairman is James Trowbridge, then employed by AMTRAK, and Vice Local Chairman is the Claimant. By letters dated January 3, 1997, the Carrier was notified that these individuals (along with four others) were the duly accredited representatives of their respective lodges. By letter dated March 28, 1997, the Carrier was notified that Carman Ty Jarrett was the duly accredited representative for the Lowell area.

The Claimant was requested by the Carman involved to attend a disciplinary Investigation in Lowell on September 25, 1997. He did so during his working hours. Due to the travel time and length of hearing, he was unable to perform any work on that day, and requested compensation for eight hours under Rule 13.3. The record reflects that the Carrier compensated the Claimant a full eight hours for acting as duly designated representative for another employee at Waterville, some 200 miles distance in July 1996, and paid him for three point two hours of hearing time only (not travel time) for similar representation in March 1997.

On the property the Carrier denied the claim based upon its assertion that in negotiating Rule 13.3, it only agreed to compensate "local" representatives, thereby doing away with the expense of paying for time spent in traveling far distances for a hearing. It

contended that since Jarrett was the duly accredited local representative at Lowell, he would be the one to be compensated, not the Claimant who had to travel a distance to attend the hearing.

The Organization pointed out that the Carrier had not acted consistently with that interpretation of Rule 13.3 when paying the Claimant for acting as representative in Waterville on previous occasions, and failing to pay Jarrett on this occasion. In a letter dated October 7, 1998, the Organization included two statements from its bargaining committee dated May 1 and 12, 1998 indicating that the intent of the term "local" in Rule 13.3 was to avoid the Carrier having to pay duly accredited representatives outside the employ of the Carrier, such as lawyers or Local Chairmen employed by another employer, and not to limit payment to representatives at a particular location. The Organization asserted that it was unreasonable for the Carrier to expect it to have a fully trained representative at each location in the system, regardless of the number of employees, noting that the Carrier did not have a corresponding Labor Relations specialist at all sites. The Organization asserted that Jarrett was able to handle day to day issues, but was not trained to represent employees at investigations, and that his attendance at the September 25, 1997 Investigation was in a learning capacity. It notes that the Carrier did not compensate Jarrett for his time in such capacity, and the Organization did not submit a claim for such payment on his behalf.

The Carrier chose not to respond to the evidence presented by the Organization in its October 7, 1998 letter or the assertions made therein, although there was over two months between its receipt and the Notice of Intent filed with the Board in this case.

On the basis of the record before us, we are convinced that the rationale used by the Board in on-property Second Division Award 13461 is equally applicable herein. When dealing with similar facts, the Board stated:

"... 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. . . .

. . . The Carrier entered no objection nor rebuttal to the Organization's position.

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

Unlike the situation in Public Law Board 5860, Award No. 8, the Board is not faced here with a claim that there is only one duly accredited representative system wide. Its holding that the language of the relevant craft Agreement contemplates multiple representatives, is not relevant to the facts herein, and is an insufficient basis upon which to conclude that “local” contemplates a representative who “is located at or in close proximity to the geographic location of the employee cited for a discipline hearing.” This is especially true in light of the unrebutted evidence of the Organization’s negotiating committee that “local” was intended to refer only to representatives employed by the Carrier, and to exclude those who were non-employees. Second Division Award 13461.

In such circumstances, we conclude that the Carrier violated Rule 13.3 by failing to compensate the Claimant for his attendance at the September 25, 1997 disciplinary hearing in Lowell. It is noted that Lowell was within the geographic coverage of Local Lodge 6315, over which the Claimant was a duly accredited representative, and that the employee involved requested the Claimant to be his representative, and the Claimant acted in that capacity.

AWARD

Claim sustained.

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

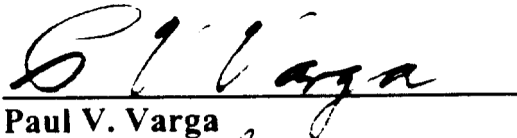
Dated at Chicago, Illinois, this 14th day of November, 2000.

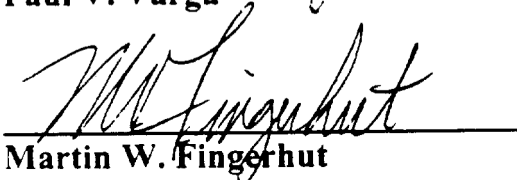
**Carrier Members' Dissent
to Award 35089 (docket TD-31728)
Referee Scheinman**

It is undisputed that Claimant entered on the duty log "special duty + 2 HRS OT". It is also undisputed that the normal interpretation of such a notation would be that the overtime occurred at the end of Claimant's tour of duty.

Thus the conclusion reached in this matter is simplistic. It is easy now to have 20/20 hindsight. However, it is "clear and misleading" to find that the Carrier should have been contractually required to seek out Claimant to interpret what he had recorded. Any ambiguity should have been explained by the Claimant at the time.

We Dissent.


Paul V. Varga


Martin W. Fingerhut


Michael C. Lesnik

