

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13968
Docket No. 13859
08-2-NRAB-00002-080012**

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

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PARTIES TO DISPUTE: (

(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

- “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 Mark Riley in the amount of five (5) hours at the straight time rate of pay for being in attendance at the hearing for Carman Ty C. Jarret.**
- 2. That, accordingly, the Springfield Terminal Railway be required to compensate Carman Mark Riley in the amount of five (5) hours at the straight time rate of pay. This is the amount he would have earned had the Carrier not violated our Agreement.”**

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.

On March 27, 2007, the Claimant was called as a witness for the formal Investigation of Carman Jarret by the Organization. Claimant appeared and testified to what he heard and saw on March 20, 2007 at the Car Shop in Lawrence, MA, but was not compensated for his attendance.

It is the Organization's position that the Claimant provided testimony which was relevant to Carman Jarret's defense and because of that he should have been compensated for attending the Investigation. It argued that the Carrier may refuse to call requested witnesses, initially, but when it is shown that the witnesses called by the Organization are material to developing the facts, the witness should be compensated in the same manner as if they had been called by the Carrier to testify. It relies upon First Division Awards 14729 and 19910 which it argued stands for the aforementioned proposition.

It is the position of the Carrier that it made the Claimant available for the Investigation pursuant to the Organization's request, but it did not believe his testimony was necessary. It argued that Rule 13.3 provides that an employee will have the opportunity to secure the presence of witnesses in his own behalf and at his own expense. Consequently, even though it permitted Claimant to attend the Hearing, it is not responsible for paying for his attendance as he was the Organization's witness, therefore, the claim should be denied.

The Board has thoroughly reviewed the record which included a copy of the formal Investigation that the Claimant testified at. After reading that Investigation it is clear that Claimant was a material witness who had valuable information concerning Carman Jarret. The Organization's argument that Awards 14729 and 19910 are on point is correct. For example Award 14729 ruled the following:

"An employee accused, as the result of an incident which requires an Investigation, may request that the carrier call certain witnesses believed by the accused to be material and necessary to develop all of the pertinent facts. The Carrier, acting in good faith, may refuse to call the requested witnesses. The accused may then call the desired witness or witnesses and in the event that at the Investigation it is shown that the witnesses so called by the accused, contributes testimony "necessary to developing the facts regarding the incident,

then the witness should be compensated in the same manner as if he had been called by the Carrier.”(Underlining our emphasis)

The Board finds and holds that Claimant had pertinent information which was necessary in developing all of the essential facts for the Investigation of Carman Jarret and because of that the claim will be sustained as presented.

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 23rd day of October 2008.