

Award No. 2889

Docket No. 2398

2-IC-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Local Chairman D. H. Gates and Local Committeemen R. E. Knight and W. E. Pritchard were unjustly dealt with when the carrier declined to compensate them for their service after their regular working hours on September 1, 1955.

2. That accordingly the carrier be ordered to compensate these aforesaid Local Committeemen for one (1) hour and twenty (20) minutes at the time and one-half rate for their service after their regular working hours of 7:00 A.M. to 3:00 P.M., on September 1, 1955.

EMPLOYEES' STATEMENT OF FACTS: Local Chairman D. H. Gates, is a freight carman, regularly assigned to the 7:00 A. M. to 3:00 P. M. shift in Johnston Yard, Memphis, Tenn. Local Committeeman R. E. Knight is a passenger carman and Local Committeeman W. E. Pritchard is a passenger car painter, regularly assigned to the 7:00 A.M. to 3:00 P.M. shift in the coach yard, Memphis, Tenn. These employees, hereinafter referred to as the claimants are the duly authorized committee, representing the employees in the carmen's craft.

On September 1, 1955, the claimants were serving as representatives for defendant Mack Welch, passenger carman at an official investigation, called for 1:00 P.M. The investigation had been postponed from 1:00 P.M., July 19, 1955 at the request of the committee due to the fact that some of the witnesses were on vacation. The investigation started at 1:30 P.M., to ascertain the facts surrounding an altercation between Passenger Carman Mack Welch and J. E. Goad, acting machinist foreman. At 2:00 P.M. the investigation was recessed by General Foreman W. D. Onn to permit defendant Goad to call a

In spite of the organization's claim that the carrier declined to compensate the local committee for their "service" while representing an employe at a formal investigation, it is obvious that the so-called service was performed entirely for the benefit of the organization and not for the carrier. If the carrier paid these labor representatives (except to the extent of avoiding loss of time during working hours, as permitted in the Railway Labor Act) for their services to the organization outside their working hours, the carrier would be in violation of the Railway Labor Act.

Therefore:

1. The Board cannot compel the carrier to violate the Railway Labor Act, and

2. Even if the controlling agreement provided for payment as claimed in the present circumstances—and carrier holds it does not—the agreement would not be enforceable because it would be in violation of the Railway Labor Act.

There is no basis for this claim, and it should be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

The parties to said dispute were given due notice of hearing thereon.

There is no rule which provides compensation for the committee representing the Carmen's craft when they outside of their regular working hours represent employes during a grievance investigation. The claimants' regular working hours on September 1, 1955, the day in question, were from 7:00 A.M. to 3:00 P.M. The investigation commenced at 1:30 P.M. and continued after 3:00 P.M.

The time so spent by the claimants after 3:00 P.M. was not compensable to them by the Carrier under Rule 37 as it extended beyond the claimants' regular working hours, and also was not compensable under Rule 4 as the services being rendered by the claimants were for the employes and not for the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1958.