

Award No. 3260
Docket No. 3058
2-RDG-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Roscoe G. Hornbeck when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 109, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

READING COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That Carman Joseph N. Dolo be paid the 4 hours pay requested at the pro rata rate of pay due to being required to attend a hearing and investigation held outside his regular working hours on June 27, 1957.

2. That the Carrier discontinue the practice of holding these hearings and investigations outside of the regular working hours of the local committee due to this being in violation of the 2nd paragraph of Rule 34 of the controlling agreement.

EMPLOYEES' STATEMENT OF FACTS: Local Chairman Joseph N. Dolo (hereinafter referred to as the claimant) has a regularly assigned position as painter at the Rutherford Car Shops, Rutherford, Pennsylvania; assigned hours being from 6:15 A. M., (EST), until 2:45 P. M., (EST), Monday thru Friday, rest days Saturday and Sunday.

Thursday, June 27, 1957 at 4:15 A. M. (EST), the claimant in his capacity as local chairman of Harrisburg Lodge No. 25, Brotherhood Railway Carmen of America and, in accordance with the provisions of the controlling agreement, was required to attend a hearing and investigation given Car Inspector J. G. Hugendubler.

For this service rendered outside his regular working hours, the claimant submitted a claim for 4 hours pro rata rate of pay which has been declined by all of the officers of the carrier, each in his turn, up to and including the highest officer so designated by the carrier with the result that he has declined to adjust it.

First: Carrier has no record of any such claim or request being presented or progressed on the property and, therefore, submits that this portion of the claim should properly be dismissed by the Board.

Second: For reasons set forth hereinbefore, carrier maintains that the second paragraph of Rule 34 (a) is not applicable to the instant dispute and carrier submits, therefore, that there is no rule under the collective bargaining agreement which offers any support or basis for Part 2 of the organization's statement of claim.

Under all the facts and evidence presented hereinbefore, carrier submits that the claim of the organization is without merit or support under the rules of agreement between carrier and System Federation No. 109 and carrier respectfully requests that the claim be denied in its entirety.

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.

Parties to said dispute were given due notice of hearing thereon.

On the undisputed facts, although Local Chairman Dolo was notified of the hearing of Hugendubler, he was not requested or directed by the carrier to appear but attended upon the request and on behalf of Hugendubler.

The time for which Dolo makes claim is not for a period during his regular working hours.

The employes assert that Claim No. 1 should be allowed under Rule 34(a) and particularly because of the second paragraph thereof which reads:

“All conferences between local officials and local committees to be held during regular working hours without loss of time to committeemen.”

The paragraph just quoted refers only to the subject matter of the first paragraph of 34 (a) viz: unjust dealings by the company toward any employe of violation of any of the provisions of the agreement.

The hearing of Hugendubler did not proceed under (a) of Rule 34, but under (b) of the rule. Rule 34 (a) has no application to the facts here developed.

There is then no issue whether Dolo is to be compensated for the loss of time he claims to have suffered because it did not arise, as he claims, by reason of a “Conference between local officials and local committeemen” as provided in Rule 34(a).

If this submission involved a conference Second Division Award No. 2889 holds against the contention of the employes.

Award No. 172, Second Division, cited by employes, allowed claim which covered period during claimants regular working hours while handling grievances.

Awards Nos. 1348 and 2736, Second Division, also cited by employes, were for time served or lost other than during their regular tours of duty but while serving as witnesses upon orders of the carrier.

AWARD

Claims 1 and 2 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1959.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3260

The majority's statement that "although Local Chairman Dola was notified of the hearing of Hugendubler, he was not requested or directed by the carrier to appear . . ." implies that it was not necessary for him to do so. The fact is however that Rule 34 clearly contemplates that in controversies between employes and the carrier the employe should be represented by his duly authorized representative — in this instance the local chairman.

Under what section of Rule 34 the hearing of Hugendubler proceeded has no bearing on the instant dispute. The claim is in behalf of the local chairman and therefore paragraph (a) of Rule 34 has application to the facts developed in the case. The issue is definitely whether Local Chairman Dola is entitled to compensation for the loss of time he suffered by reason of a conference (hearing held pursuant to Rule 34(b)) which he had to attend. That he is entitled to compensation is shown by Rule 34(a) which requires that all such conferences be held without loss of time to committeemen.

The majority, after stating that the claim did not arise by reason of a conference, then states "If this submission involved a conference Second Division Award No. 2889 holds against the contention of the employes." The majority's apparent inability to recognize what the facts are in the case may be the cause of the majority's failure to recognize that paragraph (a) of Rule 34 is applicable. Since the carrier elected to hold the conference outside of the local chairman's regular working hours he is entitled to compensation as claimed.

James B. Zink

R. W. Blake

Charles E. Goodlin

T. E. Losey

Edward W. Wiesner