Award No. 4047

Docket No. 3899

2-PULL-CM-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Carmen)

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement, the Carrier improperly denied compensation to members of the Local Protective Board for their participation in hearing accorded Painter C. W. Patton.

2. That accordingly the Carrier be ordered to:

(a) Additionally compensate Committeeman T. C. Brincefield, Victor Dahlberg, and W. S. Jennings, three hours each at the overtime rate for attending said hearing, and

(b) That in the future the Carrier comply with Rule 36 of the current working agreement and hold all conferences and hearings during regular working hours without loss of time to committeemen.

EMPLOYES' STATEMENT OF FACTS: Carmen T. C. Brincefield, Victor Dahlberg, and W. S. Jennings, are members of the local committee, Miami, Florida, and are carried on the seniority roster at that point.

The major shift at that point is the 12:00 A. M. to 8 A. M. shift, and all three committeemen, plus the employe who the hearing was held for, Mr. W. C. Patton, work on this shift.

The hearing began at 1:30 P. M. on February 8th, 1960, and was terminated shortly after 4:30 P. M.

The committee requested the foreman, Mr. E. T. Dumas, to check the time and see that their time cards were marked with three hours at the overtime rate, as per rule 36. The foreman agreed to look into the matter. On February 26, 1960, the committee was informed that the committee would not be paid for attendance at the hearing. The agreement effective June 16, 1951, as subsequently amended, is controlling.

is not subject to construction. It will be enforced as made. This Board has no equitable powers and, consequently, no authority to impose its ideas of justice and fairness in a matter that is plainly covered in the agreement by clear and concise language. We have no right to construe language which is so plain in its meaning as to be beyond interpretation . . ."

The company further has shown in this ex parte submission that since no rule of the agreement prohibited management from scheduling and holding the Painter Patton hearing between the hours of 1:30 P. M. and 4:30 P. M., February 8, 1960, management was free to hold the hearing during those hours. Many awards of the National Railroad Adjustment Board have upheld this principle. In Third Division Award 8218, under **OPINION OF BOARD,** the Board stated:

"It is axiomatic that the Carrier has all management prerogatives not relinquished by Rules Agreements . . ."

Also, the Board stated in Third Division Award 6001, under **OPINION OF BOARD:**

". . . we hold that a carrier is allowed to do anything not prescribed or limited by the agreement or by law . . ."

See also Third Division Awards 7362 and 7715.

The company submits that when the organization presents a claim, it assumes the obligation of presenting a clear and logical account of the facts and of citing rules which support its claim. In the instant case the Organization has not assumed this responsibility. In Third Division Award 4011 the Board stated, under **OPINION OF BOARD:**

"The burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance . . ."

Also see Awards 5418, 5758, 3523, 3477 and 2577.

CONCLUSION: In this ex parte submission the company has shown that the Painter Patton hearing properly was scheduled under the rules of the agreement and that the organization has misinterpreted Rule 36. Also, the company has shown that Committeemen Brincefield, Dahlberg and Jennings are not entitled to compensation for time in attendance at the Painter Patton hearing. Finally, the company has shown that awards of the National Railroad Adjustment Board support the company in this dispute.

The organization's claim in behalf of Brincefield, Dahlberg and Jennings is without merit and 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.

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

The three Claimants, T. C. Brincefield, V. Dahlberg, and W. S. Jennings, are Carmen employed at the Florida East Coast Railway Yards, Miami, Florida. They are members of the Local Committee of the Organization. Craft employes were regularly employed in this Yard on a 24-hour basis at the time here relevant. The regular working hours of the Claimants were from 12:00 Midnight to 8:00 A. M. On February 8, 1960, they represented Painter C. W. Patton in a disciplinary hearing which started at abuot 1:30 P. M. and ended at approximately 4:30 P. M. They received no pay for attending the hearing.

Since the hearing was held outside their regular working hours, the Claimants request three hours' pay at the overtime rate for each of them. They also ask that the Carrier be ordered to hold all future conferences and hearings during regular working hours of committeemen without loss of time. The Carrier denied their claim which is now before us for adjudication.

1. In support of their claim, the Claimants rely on Rule 36 of the applicable labor agreement which reads, as far as pertinent, as follows:

> "All conferences or hearings between local officials and the duly authorized local committees, shall be held during regular working hours without loss of time to committeemen."

The Carrier has initially objected to the claim under consideration on the ground that the hearing in question was held under Rule 35 of the labor agreement and that Rule 36 is not applicable to the case at hand. There is no need to rule on this objection and we express no opinion on the validity thereof. Even if one assumes, as the Claimants do, that the hearing was held under Rule 36 we are of the opinion that the Rule does not support their claim.

2. Section 3 First (i) of the Railway Labor Act only bestows upon us jurisdiction to interpret or apply a collective bargaining agreement. We are not authorized to amend, modify, subtract from or add to it. See: Award 4015 of the Second Division. Rule 36 clearly and unambiguously prescribes that hearings shall be held during regular working hours without loss of time to committeemen. The Rule plainly does not provide that hearings shall be held during regular working hours of **committeemen.** Nor does it provide compensation for committeemen who attend a hearing outside their regular working hours and suffer no loss in time. To read such provisions into Rule 36 would not constitute a reasonable interpretation but a modification thereof. We have no authority to do the latter.

The record discloses that the hearing in question was held during regular working hours as scheduled at the time here relevant and that the Claimants, who were not regularly scheduled to work during the hearing hours, did not suffer any loss of time. Accordingly, we are satisfied that the Carrier did not violate Rule 36. We also hold that the Rule does not require the Carrier to schedule all future conferences and hearings during regular working hours of **committeemen** as requested by the Claimants.

3. In further support of their claim, the Claimants have called our attention to the fact that they previously attended a disciplinary hearing outside their regular working hours and received compensation for the time spent by them in attending said hearing. This argument does also not sustain their claim. It is well recognized in the law of labor relations that a single instance is insufficient to demonstrate the existence of a consistent and mutually ac-

cepted practice. See: Award 16061 of the First Division. Moreover, the law is firmly established that past practice is of no probative value in determining the meaning of a provision of a labor agreement if the wording thereof is clear and unambiguous as is here the case regarding Rule 36. See: Award 3873 of the Second Division!

In summary, we hold that the instant claim is without merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1962.

DISSENT OF LABOR MEMBERS TO AWARD No. 4047

In view of the fact that the majority admits that Rule 36 clearly and unambiguously prescribes that "All conferences or hearings between local officials and the duly authorized local committees, shall be held during regular working hours without loss of time to committeemen," it is impossible to find any basis for the opinion of the majority that Rule 36 does not support the claim of the employes, especially paragraph (b) of the claim which asks that "in the future the Carrier comply with Rule 36 of the current working agreement and hold all conferences and hearings during regular working hours without loss of time to committeemen."

Likewise it is impossible to understand what is meant by the statement of the majority that "The Rule plainly does not provide that hearings shall be held during regular working hours of committeemen" inasmuch as the subject matter of the rule deals with committeemen.

Furthermore the holding of the majority that the carrier does not need to comply with Rule 36 of the governing agreement is inconsistent with the correct statement of the majority that the Board is not authorized to amend, modify, subtract from or add to the agreement.

C. E. Bagwell

T. E. Losey

E. J. McDermott

Robert E. Stenzinger

James B. Zink