

Award No. 4363

Docket No. 4265

2-SLSF-MA-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 22, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Machinists)**

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That Machinist C. C. Vassar, Tulsa, Oklahoma, Local Chairman Machinist was unjustly treated and the provisions of the current agreement were violated when the carrier refused to compensate him eight hours (8) at pro rata rate for January 19, 1961 account attending conference or investigation at Enid, Oklahoma, summoned by management.

2. That the carrier be ordered to compensate Machinist C. C. Vassar, eight (8) hours pay at straight time rate for the above named date, account having attended this conference during work hours.

EMPLOYEES' STATEMENT OF FACTS: The St. Louis-San Francisco Railway Company, hereinafter referred to as the carrier, employes Machinist William Thompson at Enid, Oklahoma. No other machinists are employed at Enid.

On January 13, 1961, Assistant Master Mechanic J. H. Hall sent a letter to Machinist Thompson.

Committeeman C. C. Vassar, hereinafter referred to as the claimant, was present at that conference and as he and other committeemen have done in the past after attending such conferences during regular working hours, the claimant filled out his time-card in the usual way. This time, however, the carrier refused to pay the claimant, which caused him to lose time amounting to eight (8) hours.

Claim was filed and handled on the property with all carrier officers authorized to handle grievances, including the highest designated officer, all of whom declined to adjust it.

The agreement, effective January 1, 1945 as subsequently amended, is controlling.

With respect to the second pleading, the record simply will not support characterizing the investigation held at Enid on January 19, 1961 as a conference held during regular working hours within the intent and meaning of Rule 34 (c), and the fact of the matter is Rule 34 is not actually involved in this dispute because no claim or grievance arose out of the investigation conducted with Machinist Thompson.

The carrier fully complied with the procedural requirements of Rule 35. The accused was given due notice; the investigation was held as scheduled and upon the development of facts establishing the employe was guilty of the charged offense, discipline was assessed. Neither the employe nor his duly authorized representative challenged the measure of discipline administered by the carrier.

The claim here is that the claimant be allowed 8 hours at pro rata rate for services rendered to Machinist Thompson in representing him at the investigation.

The claim is wholly lacking of merit and this Division is requested to so find.

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 waived right of appearance at hearing thereon.

On January 19, 1961, Claimant appeared at an investigation hearing as the duly authorized representative of Machinist William Thompson held at Enid, Oklahoma. (cf. transcript, Carrier's Ex. "A")

The hearing was held during Claimant's regular working hours, and he filled out his time card for eight hours which the Carrier refused to pay.

Rule 34 (c) of the Controlling Agreement reads as follows:

"Conferences between local officers and local committee to be held during regular working hours without loss of time to not more than three committeemen where one craft is involved, and not more than one committeeman from each craft where general rules affecting more than one craft are involved."

It is the Claimant's position that the investigation of January 19th was a "conference" within the meaning of Rule 34 (c), and that he is entitled to compensation for his attendance.

It is Carrier's position that the investigation was under Rule 35, which is headed "Discipline", and that the provisions of Rule 34, which is headed "Grievances" do not apply.

We recognize the distinction between "Discipline" and "Grievance" and

hold that the compensatory representation called for in Rule 34 (c) applies only to conferences concerning Grievances.

Claimant maintains that past practice has always provided for the compensation of representatives at Investigations, and in its initial submission cites two such instances, and in its rebuttal (Exhibits B-1 through B-7) cites more instances. Carrier objects to our consideration of these matters. As to the initial submission, we overrule the objection, but as to the material contained in the Employes rebuttal we uphold the objection, for the obvious reason that the dates of Exhibits B-1 through B-7 of the Employes' rebuttal reveal that they could not have possibly been considered in the processing of this claim on the property.

The assertions of past practice are not sufficient to overcome or estop the Carrier from the interpretation of Rule 34 (c) as we have applied it here.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of December, 1963.