



Award No. 5342
Docket No. 5117
2-IC-EW-'68

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the current agreement when they refused to pay the Local Chairman his regular day's pay while he was representing an employe at an investigation.

2. That the Carrier compensate Local Chairman R. E. Leonard his regular day's wages for September 17, 1964, in the amount of \$23.40.

EMPLOYEES' STATEMENT OF FACTS: That R. E. Leonard, herein-after referred to as the Claimant, is the authorized Chairman of the Local Committee who represents the Northern Linemen.

That the Hearing Officer can designate where he wants to hold an investigation.

That the Illinois Central Railroad, hereinafter referred to as the Carrier, called an investigation at Carbondale, Illinois, on September 17, 1964. The hearing officer was J. C. Ramage, Assistant Superintendent of Communications. The employe to be investigated was P. N. Toler, employed as Relief Lineman.

That P. N. Toler, having seniority on the Northern Lines, is, therefore, to be represented by R. E. Leonard, Chairman of the authorized Committee for the Northern Lines.

That P. N. Toler requested the Claimant, by telegram dated September 15, 1964, to represent him at his investigation. Copy attached as Exhibit A.

That the Claimant requested and was granted permission to go to Carbondale, Illinois, to represent P. N. Toler by his Supervisor. Copy attached as Exhibit B.

The rules do not provide for such payments. Rules 38 and 40, the discipline and no-discrimination rules, respectively, make no provision for payments of any sort to union representatives. Rule 36, the grievance rule, likewise, contains no provision to the effect that local chairmen will be paid for time spent representing employees at investigations.

All that Rule 36 provides is that a local representative can confer about grievances while on duty without the time so spent being deducted from his pay for that day.

Rule 36 does not provide that local chairmen who are on duty can engage in activities other than grievance conferences without that time being deducted from their daily earnings. Neither does this rule provide that local chairmen who voluntarily lay off from work will be paid for time spent conferring about grievances during the period they are off. In such instances, the loss of time has been caused by the man making himself unavailable for service rather than by conferences over grievances.

In the present case, the local chairman laid off the full day. His claim would be invalid even if an investigation were a grievance conference, since his loss of time was due to laying off. Moreover, his claim would be invalid even if he had not laid off the entire day. He spent his time at an investigation, under Rule 38, rather than at a grievance conference, under Rule 36. The claim, therefore, is doubly invalid; first, because the local chairman laid off his job on the claim date and, secondly, because he attended an investigation, rather than a grievance conference.

The Brotherhood also argues that the claim is "supported" by practice. We have shown that the practice is contrary to what the Brotherhood says it is. Moreover, even if it were the practice to pay local chairmen under circumstances like these involved in the present dispute, the practice is erroneous, and could not modify the rules.

Finally, even if there were a rule that specifically provided compensation for local chairmen who are off a full day to attend an investigation, the Division would have to ignore the rule and deny the claim. The rule would be contrary to the Railway Labor Act, and, for that reason, void and unenforceable.

For these reasons we request the Division to support the company's position by denying the claim.

(Exhibits not reproduced.)

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.

The facts are not in dispute. Claimant was the Local Chairman on the property. He requested and he was granted a leave of absence to represent an employe at an investigation held at Carbondale, Illinois, which is more than 300 miles from Chicago, Claimant's base of operations as an employe of the Carrier. He was present at the investigation on the date set therefor and represented the charged employe. Claimant is asking that he be paid for that day.

The application of Rules 36, 38 and 40 are urged by the Employees in support of the claim. Rule 36, which is, perhaps, the principal contract provision argued by the Employees, is captioned "Grievances", and reads as follows:

"Should any employe subject to this agreement believe he has been unjustly dealt with, or any of the provisions of this agreement have been violated, the case shall be taken to the Foreman, by the duly authorized local committee or their representative, within fifteen (15) days. If stenographic report of investigation is taken, the committee shall be furnished a copy. If the result still be unsatisfactory, the duly authorized General Committee, or their representative, shall have the right of appeal, preferably in writing, to the higher officials designated to handle such matters in their respective order, and conference will be granted as promptly as possible.

All conferences between local officials and local committee to be held during regular working hours without loss of time to committeemen." (Emphasis ours.)

Rule 38, entitled "Discipline", sets out the procedures in discipline cases and provides, among other things, that "The employe . . . shall have the right to be there represented by the authorized committee."

Rule 40 provides that the Carrier shall not discriminate against any committeemen and will grant them leave of absence, etc.

Carrier did not discriminate against the Claimant. He was granted a leave of absence to attend the investigation. There is no violation of Rule 40.

The charged employe was represented by the Claimant at the investigation as provided for in Rule 38. All other applicable conditions in that Rule were complied with.

An "investigation" is not a "conference". The former is a formal proceeding conducted to ascertain the facts relating to a specific charge. Witnesses for the Carrier and for the charged employe testify and are cross-examined. The entire hearing is formal; objections and rulings are made. A record of fairness and impartiality must be established. A "conference" is an informal meeting of all interested parties to discuss a pending grievance. It is in this context that "conference" is used in Rule 36 which deals with the subject of grievance handling. The only reference in that rule to an investigation is the provision obligating the Carrier to furnish the local committee with a copy of the transcript if a stenographic report is taken. It is only in such a "conference" that the committeemen or local chairmen are paid for attendance during regular working hours. There can be no inference that similar compensation is to be paid to committeemen and local chairmen when they are present at investigations. The contract language is clear and unambiguous. We have no right to go beyond it and write a rule which

the parties alone must agree to in negotiations. Further, this subject has been ruled on in Second Division Awards 4363 and 5013, and we see no justification to hold otherwise.

Both parties attempted to show past practice by attaching statements to their respective Ex Parte Submissions. Each has replied that they were not presented or discussed on the property and they may, therefore, not be considered. Their offering for the first time in the Submissions is contrary to the provisions in Circular No. 1 of the National Railroad Adjustment Board. Such statements are not proper evidence to be considered by this Division of the Board. The record stands without any evidence of past practice.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January, 1968.