



Award No. 5371
Docket No. 5239
2-IC-EW-'68

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter 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 on May 6, 1965, when they refused to pay P. E. Moore, Local Chairman, and C. A. Moores, Jr., Committeeman, their regular day's pay while they were representing another employe at an investigation.

2. That the Carrier compensate P. E. Moore and C. A. Moores, Jr. their regular day's wages for May 6, 1965.

EMPLOYEES' STATEMENT OF FACTS: That P. E. Moore and C. A. Moores, Jr., hereinafter referred to as the Claimants, are two Members of the Committee authorized to represent the Electrical Workers on the Kentucky, Tennessee, and St. Louis (South) Division of the Illinois Central Railroad Company, hereinafter referred to as the Carrier.

The Carrier called an investigation at Louisville, Kentucky to be held on May 6, 1965. The Hearing Officer was Master Mechanic H. B. Herrin, whose office is at Paducah, Kentucky. The Employe to be investigated was J. H. Dean, Electrician, whose place of employment was Louisville, Kentucky. The Claimants' place of employment is at Paducah, Kentucky.

J. H. Dean, Electrician, having seniority on the Kentucky, Tennessee, and St. Louis (South) Division of the Carrier, is to be represented by the authorized Committee consisting of the Claimants and one other Member, did so request to be represented by his authorized Committee.

In the past it has been the practice at Paducah, Kentucky that all craft committees could and did represent their fellow employes at investigations during regular working hours without loss of time to Committeemen.

The Claimants requested and were granted permission by their Supervisor to go to Louisville, Kentucky to represent Electrician Dean at the investigation called by the Carrier.

All that Rule 37 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 37 does not provide that committeemen who are on duty can engage in activities other than grievance conferences without that time being deducted from their daily earnings. Neither does the rule provide that committeemen 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 claimants laid off the full day. Their claim would be invalid even if an investigation were a grievance conference, since their loss of time was due to laying off. Moreover, their claim would be invalid even if they had not laid off the entire day. They spent their time at an investigation, under Rule 39, rather than at a grievance conference, under Rule 37. The claim, therefore, is doubly invalid; first, because the committeemen laid off their jobs on the claim date, and, secondly, because they 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 committeemen 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 committeemen 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.

Management waives oral hearing unless it is requested by the Union, but reserves the right to answer its submission.

(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.

Local Chairman P. E. Moore and Committeeman C. A. Moores, Jr. laid off a full day on May 6, 1965 for the purpose of representing Mr. J. G. Dean

at a formal investigation held at Louisville, Kentucky, about 225 miles from their headquarters at Paducah, Kentucky. Local Chairman Moore and Committeeman Moores then filed claim for the day they spent attending the investigation, which was denied by the Carrier. The organization contends that such denial constituted a violation of Rules 39, 41 and 37 of the Agreement.

In support of this claim, the Organization submits Awards 3845 (Johnson), 5041 (Johnson), and 5044 (Johnson). In each of these Awards a finding was made of "long standing established practice" in allowing Local Chairmen and Committeemen to attend investigations without loss of pay. Such "long standing established practice" is not found to exist in this instance. To the contrary, the evidence disclosed that only on one occasion did this Carrier compensate a Local Chairman for attending an investigation held at an away-from-home location during his usual working hours.

The Organization also submitted Award 1035 (Rudolph) in support of its claim. However, Award 1035 (Rudolph) was specifically overruled by Award 4288 (Anrod).

This Board will follow Awards 3260 (Hornbeck), 4288 (Anrod), and 4363 (McDonald). Pay for a Local Chairman or Committeeman attending an investigation was not included in Rule 39 and, therefore, must be presumed excluded (Award 3484). Rule 41 was not violated for the reason that Claimants herein were not discriminated against according to the custom and practice on this property.

Rule 37 was not violated for the reason that an "investigation" and a "conference" are not one and the same. An investigation is a unilateral fact finding procedure granted at the option and on behalf of the Carrier. In the event the employe believes he has been unjustly dealt with, or that any of the provisions of the agreement have been violated in the process of the "investigation", the matter then, and only then, ripens into a "grievance", at which time Rule 37 may be invoked.

This claim must, therefore, be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January, 1968.