Award Number 5870
Docket Number 5623
2-IC-EW-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William H. Coburn when award was rendered.

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1—That the Carrier violated the current agreement at Paducah, Kentucky, Diesel Shop, on April 2, 1966, when it ordered nine (9) Electrical Workers to give up one of their rest days to appear at an investigation and then failed to compensate them for this day.

Carrier further violated the current agreement when it called said investigation during other than regular working hours and at other than Company property.

2—That the Carrier be ordered to compensate the following Electrical Workers for nine (9) hours each at the time and one-half rate:

P. E. Moore	R. M. Clark	B. G. Dunning
R. H. Barmore	W. L. Bouland	W. M. Jennings
O. L. Lockett	H. S. Hook	P. R. Earles

EMPLOYES' STATEMENT OF FACT: That the aforementioned Electrical Workers, hereinafter referred to as the Claimants, were all employed by the Illinois Central Rialroad Company, hereinafter referred to as the Carrier.

That on March 25, 1966, Claimants were notified by Carrier to attend a formal investigation at the Irvin S. Cobb Hotel, Paducah, Kentucky, beginning at 8:00 A.M., Saturday, April 2, 1966. This notice was signed by Superintendent R. K. Osterdock and Shop Superintendent C. T. Eaker.

Claimants responded to the call from the Carrier as ordered.

The Three (3) officers of the Carrier conducting this investigation stated that they were a Board of Inquiry. Two (2) of these Board Members were imported from other points, one from Chicago, Illinois and one from Memphis, Tennessee.

Members of the Personnel Department of the Carrier were not in attendance at the actual investigation but were on the premises and acted as advisers to the "Board Members" in the handling of this investigation.

flict with the awards of this Division. See Award 55. In addition, thereto, it appears that the parties have so construed the rule on this property. No basis for an affirmative award exists.

There are many identical awards. We will not quote them all. The company quoted extensively from Award 3484 in correspondence with the union. In Award 3638, Referee Watros said:

> While making specific provision for compensating attendance at court hearings, **the agreement makes no such provisions for investigations.** Rule 4(d) is a general rule applicable to the work recognized in the scope and classification of work rules and cannot be extended to encompass service of the type in dispute. Rule 19—Attending Court provides " * * * will be allowed compensation equal to what would have been earned had such interruption not taken place with a minimum of one day's pay for each day held at court * * *." This specific provision does not provide pay for time in attending court; it protects the employe against a loss in his regular compensation. (Emphasis added)

In Award 3807, Referee Johnson said:

> Although the Agreement provides (Rule 26) that employes attending courts or inquests as witness for the Carrier shall receive "pay for all time lost at home station," **it does not prescribe payment for attending investigations.** Under such circumstances this Division held without referee in its early Award 55, where a like claim had been made:
>
> > "The absence of rules or practices which might clearly show the intent of the parties in agreeing to the rule herein involved makes this dispute a subject of negotiation."
>
> Subsequent Awards 3484 and 3638 have held likewise. (Emphasis added)

As many referees have said, attending an investigation is not work and the union's claim is invalid.

V. Summary and Conclusion

The union asserts without evidence. It claims without proof. Its argument that attending an investigation is work has been rejected by the Adjustment Board again and again. One case, Award 1632, is an identical claim under the same agreement. The union has failed to support its claim. It should be denied.

The company asks the Board to dismiss the second part of claim and deny the remainder.

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.

Claimants were required to appear at an investigation on April 2, 1966, on charges of participating in a "wildcat" strike. April 2 was a rest day for all the claimants except O. L. Lockett for whom it was a work day.

Claims are based upon the premise that employes required to appear and answer to charges against them at an investigation held on their rest day are entitled to be paid by the Carrier one day each for rest time lost at the time and one-half rate.

The rules cited and relied on by the Employes clearly are not applicable here. Claimants were not "called or required to report for work" (Rule 6); they were not called as "witnesses for the Company" (Rule 25); they were not worked for more than forty hours in their work week (Rule 3 (D)); they did not appear as grievants or for a conference (Rule 37); none suffered any wage loss by merely attending the investigation (Rule 39).

Claimants were called as principals in the investigation to answer charges which were a matter of personal concern to each of them. The rules on the property do not require the payment of compensation here sought under these circumstances.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 9th day of April 1970.

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