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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 6441  
Docket No. 6259  
2-BN-EW-173

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

Parties to Dispute: ( System Federation No. 7, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Electrical Workers)  
(  
( Burlington Northern Inc.

Dispute: Claim of Employees:

1. That in violation of the current agreement, the Carrier improperly denied Electrician C. Norder compensation for attending investigation held during regular working hours in the Master Mechanic's office at Cicero, Illinois on March 25, 1971.
2. That accordingly, the Carrier be ordered to additionally compensate the aforementioned Electrician in the amount of eight (8) hours at the straight time rate for March 25, 1971.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Claimant attended a formal investigation as a witness for an employee who had been charged with intoxication while on duty. The issue in the case appears to be whether or not the Claimant should be paid by the Carrier for the time spent in the investigation.

Rule 20 of the applicable agreement states:

Attending investigations

"Employees shall not be required to lose time from their regular assignments because of being required to attend investigations or report for physical examinations. So

far as is possible, investigations shall be conducted during regular working hours."

Both Claimant and the Carrier concur in the essential facts; Claimant was called by the defendant in the investigation as a witness, the investigation took place during regular working hours, and Claimant did testify. The agreement provides in Rule 35 pertaining to investigations in part:

"(c) At least five (5) days advance written notice of the investigation shall be given....in order that the employee may arrange for representation by a duly authorized representative and for presence of necessary witnesses he may desire...."

The Carrier argues that since the Rule 20 language is clearly intended to pertain to witnesses required by the Carrier, it has no liability in this case. The Organization contends that the past practice of the Carrier supports their position, but presented no evidence on the property supporting this contention. None of the cases cited by either party with respect to payment of witnesses parallels this matter on both facts and the Rule.

Under the Rules, Carrier has the obligation to conduct "fair and impartial" investigations in disciplinary situations. We believe the Carrier has the right to assign its employees in the normal course of their employment to virtually any reasonable activity, whether attending a meeting, conference, investigation or merely sitting in an office, so long as the Carrier meets its obligations in compensating the employees in accordance with the terms of the agreement, and violates no other rules in its assignment. With this normal prerogative of the Carrier in mind it must be assumed that Rule 20 was drafted without the implied modification that employees "...being required to attend investigations" may only be "required" by the Carrier. It is our opinion that Rule 20 would not be part of the agreement if it pertained only to witnesses called by the Carrier to participate in investigations, since it would not be needed.

An examination of Rule 19 casts additional light on the matter. That Rule reads in part:

"When employees are held from their regular service, or furloughed employees are called, to attend court as witnesses for the Company, they will be allowed compensation...."

From this rule it would appear that the parties did not specify "required by the Carrier" in Rule 20 deliberately, since Rule 19 indicates

that this language and intent was used elsewhere in the Agreement.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: E. A. Killen  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of January, 1973.