

The Second Division consisted of the regular members and in addition Referee James F. Scarce when award was rendered.

Parties to Dispute: (System Federation No. 16, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That under the current working agreement Carmen Local Chairman Simon P. Camp and Vice Local Chairman W. E. Schultz were unjustly denied pay and reimbursement for transportation costs when representing Carmen in formal investigation during their regular working hours on July 16, 1976.
2. That, accordingly, carrier be ordered to compensate Local Chairman Simon P. Camp and Vice Local Chairman W. E. Schultz seven (7) hours each at straight time rate of pay for July 16, 1976, and fourteen dollars (\$14.00) for transportation costs incurred on the same date.

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 July 16, 1976 the Claimants herein, who were duly authorized to do so, represented an employee in the investigation of a grievance. To do so, it was necessary that they depart their own location -- Frankfort, Indiana and travel to Indianapolis-- some fifty (50) miles away, thereafter returning to their home location. Such initial travel, the subsequent meeting and the return trip was consummated during their regular work hours. Upon presentation of a claim for such time and travel costs (at \$.14 per mile), the Claimants were denied compensation.

The Organization cites two provisions of the Agreement in effect between the parties as controlling here:

Rule 32 - Grievances

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, he shall have the right to take the matter up with his foreman in person or through the duly authorized local committee within ten days. If unable to arrive at a satisfactory settlement with the foreman, the case may be taken to the highest local officials in the regular order, preferably in writing. If stenographic report of investigation is taken, the committee shall be furnished a copy. If the result still be unsatisfactory, the employe or the duly authorized general committee shall have the right of appeal, preferably in writing, with the higher officials designated to handle such matters in their respective order, and conference will be granted within ten days of application.

Should the highest designated railroad official, or his duly authorized representative, and the duly authorized representative of the employes fail to agree, the case may then be handled in accordance with the Railway Labor Act.

All conferences between the local officials and local committees to be held during regular working hours without loss of time to committeemen. Prior to assertion of grievances as herein provided and while questions are pending, there will neither be a shutdown by the employer nor a suspension of work by the employe.

Rule 34

The Company will not discriminate against any committeemen who, from time to time, represent other employes, and will grant them leave of absence and free transportation when delegated to represent other employes.

The Organization also asserts a longstanding past practice of compensation of representatives when engaged in such efforts, as well as reimbursement for personal transportation costs as incurred herein. It submits numerous affidavits from past and present representatives throughout the Carrier's system attesting to this practice.

In contrast, the Carrier contends that Rule 32 is inapplicable here, in that the work of the representatives involved "investigation" rather than a "conference" and which it explains entails two completely different purposes -- an investigation being a function at the Organization's behest and which is not

compensable, and a conference being an informal meeting to discuss matters of general interest to both parties which is compensable. The Carrier points to the specific term conference in Rule 32. As to Rule 34, the Carrier contends the Claimants were granted leaves of absence -- which is not compensable and that transportation, if any, would be that provided by the Carrier, and not reimbursement for use of a personal vehicle. Both parties supported their positions by prior Awards.

It may be that the framers of Rule 32 intended a different meaning as between "investigation" and "conference," but if so, such distinction was not made manifest. If, as the Carrier contends, conferences are not related to the work of investigating and/or resolving grievances, it does not follow that a provision relative to conferences (as defined by the Carrier) would be integral to the Rule which clearly sets forth as its purpose the procedure for grievance handling. Thus, it seems obvious that the presence of the expression "All conferences between the local officials and local committees to be held during regular working hours without loss of time to committeemen. . ." in Rule 32 is more reasonably interpreted to mean all meetings under this provision rather than conferences between the local officials and local committees to discuss non-grievance handling matters of mutual interest as is asserted by the Carrier.

As to Rule 34, using the same rationale as before, this provision would appear to be applicable to non-routine duties of a committeeman. The term "other employees" as cited in the Rule would more likely relate to employees of the Carrier who are properly represented by the Organization, but who are outside the normal sphere of representation of the specific Organization official involved. In other words, this provision would appear to have been established to deal with special circumstances where representation would be outside the normal conduct of affairs. This interpretation would appear to be reinforced by the expression "when delegated" as found in Rule 34; thus giving support to the application of this Rule to special circumstances.

We conclude that Rule 32 is properly interpreted to ensure that duly authorized officials have a right to represent the interest of employees in matters related to grievances and will not be required to suffer loss of time (and thus wages) in the process. This applies to the interests of employees within the normal scope of any such duly authorized official. The fact that the Carrier placed the Claimants herein on leaves of absence does not compel a conclusion that such action was taken under Rule 34; even given that the Claimants acted under the provisions of Rule 32, the Carrier's actions (i.e. placing them on leaves of absence) would be a sound business practice for purpose of accountability. However, we are not inclined to support the Organizations claim for mileage costs. Rule 32 makes no reference to this aspect of grievance handling and it is here that a showing

of a "past practice" would come into play. No such showing was made by the Organization on the record.

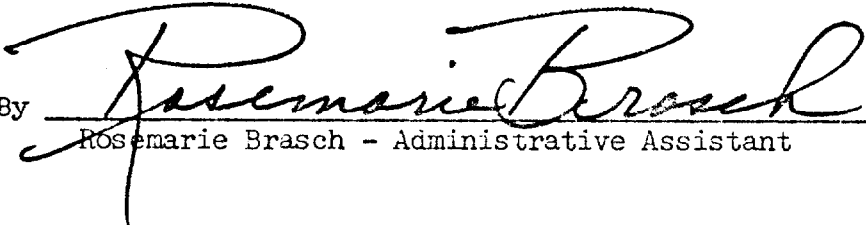
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Claims are affirmed to the extent that the Claimants shall be compensated for straight time at the appropriate rate of pay for July 16, 1976.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 17th day of October, 1979.