Form 1

The Second Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

System Federation No. 97, Railway Employes' Department, A. F. of L. -(Electrical Workers) Parties to Dispute: Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employes:

- (1) That the Carrier erred and violated the contractual rights of Mr. R. E. Groom by refusing to compensate witnesses at an investigation.
- (2) That, therefore, Mr. Groom be reimbursed an amount of \$467.80.

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.

Mr. R. E. Groom, the claimant, is a regularly employed Electronics Technician in carrier's Coast Line Communications Department, headquartered in Fheonix, Arizona. He was required to attend a meeting where the validity of two time sheets he had submitted was to be investigated. The meeting was scheduled to be held in Winslow, Arizona, about 200 miles from the claimant's headquarters.

Since the hearing was being held 200 miles away, the organization requested that the carrier pay wages and expenses of all witnesses. If it would not, the organization asked that the carrier hold the hearing at claimant's headquarters. Carrier refused to set the site of the hearing at Pheonix, since all of the witnesses from Winslow would then have to travel. This would have been more inconvenient for a greater number of employees. Holding the hearing in Pheonix would interfere with company operations at Winslow, since three employee witnesses required for the investigation could not be spared from the Winslow Relay Office at the same time.

The meeting was held at Winslow and the claimant reimbursed two witnesses called by him for lost time and expenses. He is now seeking reimbursement from the carrier for money he allegedly paid to these witnesses. The organization bases this claim on an alleged violation by carrier of Rule 35 of the July 1, 1969 agreement. By requiring the claimant to appear at a hearing 200 miles from his headquarters and requiring him to pay expenses for two witnesses necessary to his defense in the investigation, he was denied a fair and impartial hearing. The organization does not contend that Rule 35 requires payment to employee witnesses when called for a hearing. It does argue that justice and fair play dictates that the claimant should not have to bear the burden of paying expenses for witnesses to have them available for his defense at a hearing that may result in the loss of his job or his being assessed demerits. The Organization further contends that the two witnesses called by the claimant were essential to his defense and that they should have been called by the carrier if it intended to comply with the requirement that a fair and impartial investigation into the matter be held.

While the claimant in this case may have been put in an inconvenient position as a result of the investigation being held 200 miles from his home and while he may have had to incur some personal expense to reimburse his witnesses for travel and time lost, there is no evidence in the record before us to show that this resulted in a violation of Rule 35, as written. There is also no indication in the record to support a finding that the carrier acted in an arbitrary or capricious manner by establishing the hearing site at Winslow. In fact, it had good reason to do so. It minimized the travel that would be required.

The gravamen of this dispute is that no schedule rule has been violated in this instance by the carrier. Third Division Award No. 21 58 very clearly provides the Board's position on the necessity for a schedule violation. This Board has consistently ruled that a provision of the agreement that prohibits the carrier from taking a course of action must first be cited and that the union must then demonstrate how the carrier's course of action violated that provision. Unless a provision exists that prohibits the carrier from pursuing a course of action, this Board has no authority to rule against it. No specific rule was violated by carrier in this case.

The organization argues that Rule 35 does not prohibit carrier from paying the expenses of employee witnesses at investigations. Therefore, it claims, a sense of fairness would require that they be paid. This argument cannot prevail. If the parties had intended that employee witnesses should be reimbursed, they would have clearly so stated. Absent the language to authorize such payment, this Board cannot direct a payment, despite the burden that may be placed on the witnesses. To do so would be to write a benefit for the union into the agreement that is not now there.

AWARD

Claim denied.

NATIONAL RAITROAD ADJUSTMENT BOARD By Order of Second Division

Attest: Executive Secretary

National Railroad Adjustment Board

semarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of April, 1980.