



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.

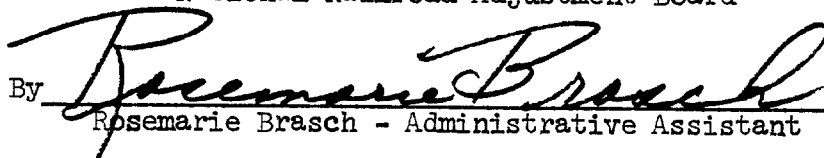
The organization argues that Rule 35 does not prohibit carrier from paying the expenses of employee witnesses at investigations. Therefore, it claims, a sense of fairness would require that they be paid. This argument cannot prevail. If the parties had intended that employee witnesses should be reimbursed, 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.

A W A R D

Claim denied.

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 16th day of April, 1980.