Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 9134
SECOND DIVISION Docket No. 9018
2-MP-CM-'82

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Missouri Pacific Railroad Company

Dispute: Claim of Employes:

1. That the Missouri Pacific Railroad Company violated Rule 33 of the controlling Agreement as amended May 27, 1979, when they checked out Carmen C. J. Clear and A. J. Savage May 1 and 2, 1979, when they represented Carman D. M. Murray at Omaha, Nebraska in his investigation.

2. That the Missouri Pacific Railroad Company be ordered to compensate Carmen C. J. Clear and A. J. Savage in the amount of nineteen (19) and one-half (.5) hours at the pro rata rate for this violation.

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 C. J. Clear and A. J. Savage are Carmen employed by Carrier at its repair facility in Kansas City, Missouri. They are also duly elected Local Union Representatives and, as such, are part of the Lodge 36 Local Union Committee.

Carman P. M. Murray is employed by Carrier in its Omaha, Nebraska, repair facility. He was the subject of an investigation that was scheduled for May 1 and 2, 1979. He requested that Claimants, as part of the Local Committee, be present to represent him at the hearing. Murry was also represented at the hearing by T. S. Daniels, General Chairman, and T. W. Jacobson, Local Chairman.

Claimants left work on April 30, 1979, at 11:30 p.m. They traveled to Omaha, Nebraska, remained there through May 2, 1979, and returned to work at the start of their shift on May 3, 1979. Claimants were off their jobs a total of nineteen and one half (19.5) hours. Carrier refused to pay them for time lost at their home point.

The Organization argues that Omaha, Nebraska, where Murray worked, is a part of the territory covered by Local 35 of the Carmen's Organization and that, as such, he is allowed to have the Local Chairman and the Local Committee members available to assist him in a disciplinary investigation. The Organization further claims that the May 27, 1959 Letter of Understanding further supports its position and that Carrier has always paid claims of the same nature since the 1959 Letter was agreed upon.

It finally argues that Article 33 of the 1960 Agreement does not supercede the May 27, 1959 Letter. The 1959 Letter was an interpretation of Article 33 and, until recently, Carrier applied it as such. Carrier's Letter of Understanding, dated May 27, 1959, reads in pertinent part:

> "You were further advised that Local Committeemen representing an employe who is being investigated will not be required to check out to attend the investigation."
>
> "Rule 33
>
> Rule 33. The Company will not discriminate against any Committeeman, who from time to time, represents other employes and will grant them leave of absence and free transportation when delegated to represent other employes."

Carrier argues that Article 33 of the current Agreement supercedes the 1959 Letter and that, consequently, the contract is silent on pay for Committeemen while attending hearings. It further contends that the practice has been not to pay Local Committeemen for time lost if they had to travel to a hearing or investigation. It finally argues that the Organization has served two separate Section 6 notices on Carrier. They each requested changes in Rule 32. The language to be added reads as follows:

> "August 1, 1977 Notice
>
> (7) All investigations shall be held during regular working hours without loss of time to committeemen or employes attending as witnesses."
>
> "September 15, 1980 Notice
>
> (f) All investigations shall be held during the first shift without loss of time to committeemen..."

If in fact the current Agreement or a valid practice of paying all Committeemen for attendance at hearings did exist, such a demand would be unnecessary. A careful review of the record of this case reveals the following: (1) The Organization has not been successful in establishing that the May 27, 1959 Letter of Understanding applied to Committeemen who had to travel to and from one location to another to represent an employe. (2) It has not been successful in establishing that since 1959, a controlling practice existed on this Carrier to pay Committeemen who traveled from their home point to another point on the railroad to represent an employe for lost time. In fact, Carrier cited a number of situations in which such claims were withdrawn by the

Organization. (3) The Organization has not been successful in undermining Carrier's argument that Rule 33 is controlling in this instance. It is the opinion of this Board that Rule 33 speaks to payment for Committeemen who must travel in the course of their business and that this rule only obligates Carrier to grant Committeemen who must leave their home point a leave of absence and free transportation. The clause is noticeably silent on the issue of pay for lost time, just as is the rest of the controlling Agreement.

When these points are considered, together with the fact that the Organization has unsuccessfully attempted to gain through bargaining what it also seeks in this claim, it must be concluded that the Organization's claim is not based on a solid foundation. If it were, it would not be necessary for the Organization to attempt to effect language changes pertaining to this issue in the 1977 and 1980 Section 6 notices.

It is the opinion of this Board that the Organization has not met its burden of proving its claim and that it must consequently be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of June, 1982.