

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

Parties to Dispute: (International Brotherhood of Electrical Workers  
(Burlington Northern Railroad Company

Dispute: Claim of Employes:

1. That in violation of the current agreement, the Burlington Northern Railroad did deny Communications Crew Foremen C. J. Conley and M. M. Seastedt compensation for wages lost and expenses incurred while attending a Carrier disciplinary investigation in Galesburg, Illinois on April 13, 1984.

2. That accordingly, the Burlington Northern Railroad be directed to compensate Communications Crew Foremen C. J. Conley for lost wages totalling three and five-tenths (3.5) hours at the pro rata rate, and Crew Foreman M. M. Seastedt for lost wages amounting to seven (7) hours at the pro rata rate plus mileage at the Burlington Northern Railroad's current rate for one hundred twenty (120) miles.

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 employes 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.

The Claimants were asked by the Organization to be present at a disciplinary Investigation involving another employe on April 6, 1984. The Claimants were to be present at the Investigation as witnesses. The Claimants were claiming wages and travel allowance for attending the disciplinary Investigation in Galesburg, IL.

The Organization argued that the failure to pay the Claimants is a violation of Rules 20 and 30, which are reproduced as follows:

"Rule 20 (a) Employees taken away from their regular assigned duties, on instructions of the Company, to attend court, inquest or to appear as witnesses for the Company at any investigation or hearing shall be furnished transportation and shall be allowed compensation equal to what would have been earned had such interruption not taken place.

This paragraph only of this rule shall, in cases of disciplinary investigations, also include the duly authorized representative of the employee being investigated and 'necessary' witnesses whose presence have been arranged for with their supervisor."

\* \* \*

"(d) Employees shall be reimbursed for any necessary actual expenses while away from the place of employment under the provisions of this section. Any fee or mileage accruing shall be assigned to the Company.

Rule 30 (c) ... The Carrier shall produce at the investigation all necessary employee witnesses who have direct personal knowledge of the matter under investigation...."

The Organization argued the Claimants had direct personal knowledge and were necessary to a proper Investigation. Firsthand knowledge is not necessary in order to comply with the above Rules. The Organization noted the Claimants testified extensively and were questioned by the Hearing Officer who did not object to their presence. The Organization argued that Paragraph 2 of Part (a) of Rule 20 is a stand alone paragraph and has nothing to do with the first paragraph of that Rule.

The Carrier argued that it had disclaimed liability from the beginning and stated that by any definition of the word "necessary" the witnesses were not necessary as required in Rule 20, as they had no firsthand knowledge of the incident being investigated and that their testimony was very limited. The Carrier argued that Rule 20 applies only to witnesses for the Company, and Rule 30 limits witnesses to firsthand knowledge. The Company noted in any event that the Claimants' headquarters are at Galesburg, IL and the Investigation was conducted at Galesburg.

Upon complete review of the evidence, the Board finds that Rule 30 does not apply to this case. The Transcript shows that neither Claimant had "direct personal knowledge" of the matter under Investigation. The Board must then decide whether Rule 20 applies to this case. The careful reading of the Rule, and with no evidence provided to the contrary, indicates that the second paragraph of Part (a) Rule 20 is a stand alone paragraph. The first paragraph clearly applies only to witnesses required by the Company to attend various

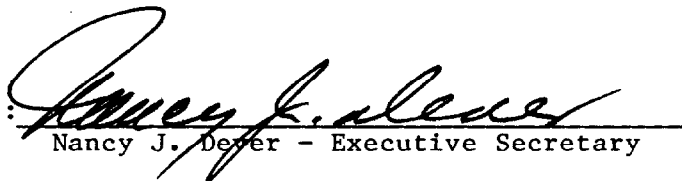
types of Hearings. For disciplinary Investigations the Organization is allowed to have the employee being investigated, their duly authorized Representative, and "necessary" witnesses. The question remaining before this Board is, were the Claimants necessary to the Investigation that was being held. By the Carrier's own definition, "necessary" is defined as "essential to a desirable or projected end or condition; not to be dispensed with without loss, damage, inefficiency, or the like, as necessary tool, evil." A careful reading of the Transcript indicates the Organization had reason to believe that the testimony of the Claimants would meet at least the minimum standards under the above definition. Their testimony certainly could have had a bearing on the outcome of the Investigation. Therefore, the Board finds that Rule 20, Part (a) Paragraph 2 applies, and, therefore, Paragraph (d) of the same rule would apply, and the Claim will be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 20th day of May 1987.

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CARRIER MEMBERS' DISSENT  
TO  
AWARD 11264, DOCKET 11039  
Referee McAlpin

This decision is a Non Sequitur!

Rule 20, on which this dispute is upheld requires that:

1. The Employee be "on instructions of the Company...";
2. The Employee "appears as a witness for the Company...";
3. The Employee be a "'necessary' witness".

The Award substantiates "that neither Claimant had 'direct personal knowledge' of the matter under investigation" (P.2); and Rule 30(c) requires that Carrier produce the "necessary employee witnesses who have direct personal knowledge of the matter". It is self-evident that NONE of the rule requirements has been met.

The Organization enunciated its position on the property that:

"Their [Claimants] direct personal knowledge that it was a policy of the last six (6) years for the crew to sleep in their cars on Company property while off duty also was very pertinent and necessary testimony for Mr. Lampton's defense".

How such is necessary, as clearly stated in the rules, to the defense of the charge of being in violation of Rule G at 1:48 A.M. on April 5, 1984, is not explained in this Award. It may explain being on the property, but such has nothing to do with the Rule G violation. Neither is there any provision of Rules 20 or 30 which has been shown to have been violated by the Carrier.

Instead, the Majority has CONCOCTED, CREATED AND FABRICATED a rationale that:

"The Organization has argued that Paragraph 2 of Part (a) of Rule 20 is a stand alone paragraph and has nothing to do with the first paragraph of that Rule."

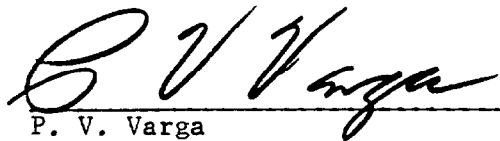
There is no evidence from the on-property handling, nor is there any argument in the Submissions to this Board that would support such a conclusion.

Yet, even if the Majority position, that the second paragraph of Rule 20(a) "stands alone" is correct, how does one get around the requirement in THAT paragraph for "necessary" witnesses. The only applicable definition appears in Rule 30(c) and Claimants did not satisfy that requirement.

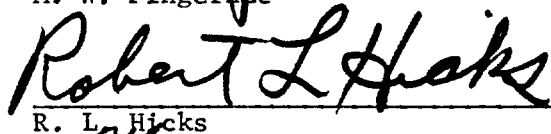
Finally, it is noted at Page 2 of the Award that Claimants were headquartered at Galesburg, the location of the hearing, but the Majority, nevertheless, allows asserted travel expenses.

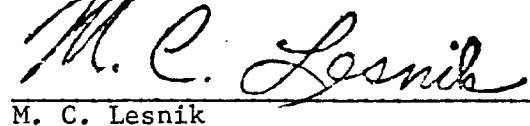
This Award is not the interpretation of a contractual dispute, but a misguided attempt to dispense perceived equity.

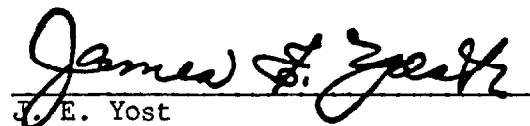
We vigorously dissent.

  
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P. V. Varga

  
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M. W. Fingerhut

  
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R. L. Hicks

  
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M. C. Lesnik

  
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J. E. Yost