



Award No. 15636
Docket No. SG-15463

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN
CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Rock Island and Pacific Railroad Company that:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 27, when it instructed Signal Maintainer H. Klein, Medford, Oklahoma, to attend an investigation at El Reno, Oklahoma, on April 26, 1963; then failed and/or refused to compensate him for that day or pay the expenses he incurred in making the trip.

(b) Carrier be required to compensate Mr. Klein for eight hours at his regular rate of pay of \$2.7888 (\$22.3104) plus \$16.00 auto mileage (200 miles at 8 cents per mile) and reimburse him for the two meals he purchased (breakfast 92 cents - lunch \$1.12).

[Carrier's File: L-130-283; General Chairman's File: AV-302]

EMPLOYEES' STATEMENT OF FACTS: The Claimant in this dispute, Mr. H. Klein, is the regularly assigned Signal Maintainer at Medford, Oklahoma.

On April 22, 1963, Carrier gave Mr. Klein written notice to attend an investigation scheduled to be held at 9:00 A. M. on April 26, 1963, at El Reno, Oklahoma, which is approximately one hundred (100) miles from Medford. (See Brotherhood's Exhibit No. 1.) As there was no train service available to Mr. Klein, he drove to El Reno.

The investigation began approximately 9:30 A. M. In the beginning, it was disclosed that Mr. Klein had not received the required 72-hour advance notice in accordance with the Signalmen's Agreement. After discussing the situation, Mr. Klein was given twenty (20) demerit marks, and the investigation was not completed or postponed.

A stenographer was present to record the proceedings. However, the Organization and the Claimant have not been furnished a transcript copy of the portion of the investigation that was held.

2. On April 26, 1963, an investigation was held for and in behalf of Signal Maintainer Hubert Klein, Medford, Oklahoma. When Signal Maintainer Klein arrived at El Reno, Oklahoma, for the investigation, he waived the formal investigation and admitted his responsibility for violation of Rule 426, Rules and Regulations for Maintenance of Way and Structures. This was done with the approval of his duly authorized representative. Signal Maintainer Klein was assessed twenty (20) demerit marks for his violation of Rule 426.

3. The Signalmen filed claim on June 8, 1963, alleging violation of Rule 27 of the Signalmen's Agreement. Eight hours' pay at the pro rata rate for April 26, 1963, was claimed in behalf of Signal Maintainer Klein plus \$2.04 for meals and \$16.00 mileage (200 miles at 8 cents per mile) for a total of \$18.04 expense allowance.

4. The handling of the instant claim is shown in the following Carrier's Exhibits:

- A — Employees' letter of claim dated June 8, 1963;
- B — Carrier's June 18, 1963, letter of denial;
- C — Employees' July 5, 1963, letter of appeal;
- D — Carrier's August 15, 1963, letter of denial;
- E — Employees' September 24, 1963, letter of appeal;
- F — Carrier's November 18, 1963, letter of declination.

Through subsequent correspondence and conferences this claim was not resolved. Hence, this submission to your Board.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, the regularly assigned Signal Maintainer at Medford, Oklahoma, received notice from Carrier to attend an investigation at 9:00 A. M. on April 26, 1963 in El Reno, Oklahoma, which is approximately one hundred (100) miles from Claimant's station. Pursuant to said notice, Claimant appeared with his representative at the appointed time even though the notice he had received was defective under Rule 64 of the Signalmen's Agreement.

Claimant then agreed to waive the defective notice as well as a formal investigation, and accepted disciplinary action in the form of twenty (20) demerit marks. Claimant here contends that he is entitled to payment of lost wages and expenses incurred on the date of the scheduled investigation under the provisions of Rule 27 of the Signalmen's Agreement, which provides as follows:

"RULE 27. ATTENDING COURT

Employees attending court, inquests, investigations or hearings, under instructions from the railroad company will be paid compensation equal to what they would have earned on their regular assignment, and if so used on days off duty, they will be allowed eight (8) hours' pay at the pro-rata rate for each day so used. Actual necessary expenses will be allowed while away from their head-

quarters. Any fees or mileage accruing for such service will be assigned to the railroad company."

Carrier contends that Rule 27 only applies to employees attending a proceeding at Carrier's behest and in its behalf, as a witness. Carrier cites various awards under different and distinguishable rules to support its contention. Furthermore, Carrier maintains that as no formal investigation was actually held and Claimant accepted disciplinary action, his rights fell solely within the purview of the disciplinary provisions of the Agreement.

The record discloses that Carrier has made such payments to other employees in a few similar cases in the past. While such previous instances of payment would not preclude Carrier from invoking clear and unambiguous language of the Agreement in the instant case, no such language supporting Carrier's position is found therein. In fact, Rule 27 clearly provides that "Employees attending . . . investigations or hearings under instructions from the railroad company, will be paid compensation equal to what they would have earned on their regular assignment. . . ." (Emphasis ours.) The applicable rule contains no qualification as to the reason or purpose for an employee's attendance at such investigations or hearings, which are found in other rules cited by Carrier in support of its position. Moreover, Claimant here actually lost a day's pay by attending the investigation, unlike Claimants in some earlier awards cited by Carrier.

We found no evidence to support Carrier's further contention that Article 27 of the Agreement is inapplicable because Claimant waived a formal investigation. The abortive investigation was convened as scheduled by Carrier and Claimant traveled approximately one hundred miles to attend it pursuant to Carrier's notice. The mere fact that Claimant thereafter agreed to waive further investigation does not change Carrier's responsibility for his lost time on his regular assignment or necessary expenses incurred by him in attending the investigation.

We have consistently held that this Board has no authority to supply by decision that which the parties fail to include in a written Agreement. Award 11787. Accordingly, we must sustain the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934; and

That the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of June 1967.

**CARRIER MEMBERS' DISSENT TO AWARD 15636
IN DOCKET SG-15463**

This award is in serious error for allowing compensation to Claimant for attending an investigation at which he was a principal and was found guilty of rules infraction on his own signed plea. The agreement will not support such a result.

Claim was made under the provision captioned "Attending Court" and quoted in the Opinion. Such provisions do not apply to principals in disciplinary proceedings. The agreement contains several rules under a separate general section titled "Investigations", which are expressly concerned with disciplinary proceedings. The only rule thereunder allowing any compensation to principals in disciplinary proceedings is a provision titled "Exoneration." But Claimant was found guilty, and in no sense was he exculpated. If any ambiguity existed in Rule 27 under these facts, it was resolved by a reading of the contract as a whole rendering resort to practice unnecessary.

**T. F. Strunck
R. E. Black
P. C. Carter
G. L. Naylor
G. C. White**