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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23918
Docket Number CL-23253

Rodney E. Dennis, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railway, Airline and Steamship Clerks,
{ Freight Handlers, Express and Station **Employees**
{ **The Atchison, Topeka and Santa Fe Railway Company**

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-8526)
that :

(a) Carrier violated the provisions of the current Clerks' Agreement at Bakersfield, **California**, on May 3, **1977**, when it notified Claimant J. J. Werla **that** he would not be allowed jury duty pay compensation for Monday, April 25, **1977**, for performing **jury** duty service, and

(b) Carrier shall **now** compensate **Claimant** J. J. Werla for eight (8) hours' pay at the pro rata rate of his regular position, Crew Clerk Position No. **6273**, for April 25, **1977**, as a result of **violation** of Agreement rules, and

(c) **In** addition to the money **amounts claimed herein**, the Carrier shall pay an **additional amount** of ten per cent interest per annum, **compounded** annually on the anniversary date of claim.

OPINION OF BOARD: J. J. Werla. Claimant in this case, is regularly employed in clerk position No. 6273 at Bakersfield, Ca., on the **11:30** p.m. to **7:30** a.m. shift. Tuesdays and Wednesdays were his rest days.

Claimant was called for **jury** duty. He **worked** from **11:30** p.m. on Sunday night to **7:30** a.m. on Monday morning. He reported for jury duty at **9:30** a.m. on Monday **morning** and remained there until **4:30** p.m.

Claimant requested that he be authorized a jury duty leave day under Rule 39 of the agreement **for** Monday, since he would again have 'to work all night Monday and report for jury duty on Tuesday **morning**. carrier denied Claimant's request on the basis that the jury duty did not **conflict** with the hours of his work assignment. Claimant **layed** off **Monday** night, but received no pay. He eventually filed the instant **claim** for one day's pay under Rule **39, Jury Duty**.

That rule reads in pertinent part as follows:

"When a regularly assigned **employee** is **summoned** for jury duty and is required to lose **time** from his **assignment** as a result thereof, he shall be paid for actual **time** lost with a **maximum** of a basic day's pay at the straight time rate of his position for each day lost less the amount allowed him for jury service for each such day, excepting allowances paid by the court for **meals, lodging or transportation**, subject to the following **qualification requirements and limitations**."

The Organization contends that it is an unreasonable interpretation of Rule 39 to require Claimant to serve on jury duty and work an eight-hour shift within the same **24-hour** period. It also argues that the identical case, occurring on this property with the **same** parties, has recently been decided by this Board (Award **22358, Lieberman**). In **that** award, the Organization's position was upheld. Given the strong emphasis on precedent in this industry and the labor relations stability attributed thereto, this Board **should** sustain the **instant** claim.

Carrier, on the other hand, argues that Award 22358 is palpably erroneous and should not be **followed**. It cites Second Division Award 6295 (**Bergman**), to support **its** position.

After extensive **review** and discussion of the record and the cases submitted on both sides of the issue, it is the opinion of this **Board** that this claim should **be** sustained on account Claimant was required to appear for **jury** duty and was required to work **11:30 p.m. - 7:30 a.m.** **Rational** consideration would tell one that such a schedule could not be maintained for any length of time. As the union stated in its presentation, if Claimant had not been **granted** leave **for Monday** evening; he would have been allowed to rest five out of **40** hours. We think that such a situation does not fall within a reasonable interpretation of Rule **39**.

This **employee** was subject to long hours when the **time** serving on jury duty and time on the job were considered together and this is an **un-**reasonable application of Rule **39**. As to petitioner's claim for interest, we find no **authority** in the Schedule Agreement **to** support such a demand.

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**;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier violated the **Agreement**.

A W A R D

Claim sustained in accordance with the Opinion.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting **Executive Secretary**
National Railroad **Adjustment** Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at **Chicago, Illinois**, this 30th day of **June 1980**.