

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24587
Docket Number CL-24480

George S. Roukis, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and Steamship Clerks
(Freight **Handlers**, Express and Station **Employees**
(Belt Railway Company of Chicago

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9564) that:

1. Carrier violated the effective Clerks' Agreement when it required Mr. Joseph Russo to report off **work without** pay for an entire eight (8) hours on a day on which a hearing was held at his request pursuant to the "Unjust Treatment" Rule:

2. Carrier shall now compensate Mr. Russo eight (8) hours' pay at the pro rata rate of his position for May 29, 1981.

OPINION OF BOARD: The Organization contends that Carrier violated the controlling Agreement, particularly Rule 30, when it required Claimant to mark off work on **May** 29, 1981. Claimant had requested an unjust treatment investigation, pursuant to Agreement Rule 34, because he felt unjustly treated in having to answer certain questions in connection with a complaint lodged against him. Organization argues that Rule 30 which in part requires that investigations and hearings be held at such time as to not cause employees to lose rest or time, was purposely evaded since Carrier was penalizing Claimant and deterring by example other employees from asserting similar rights. The **Organization** avers that Carrier historically permitted employees to work **their** assigned duty tour, except for the time needed to attend investigations and were correlatively compensated for such attendance unless a charged employee was found guilty of a cited offense.

Carrier contends that it was the policy for employees to mark off when it appeared that an investigative hearing would be lengthy. It argues that Claimant was required to mark off on May 29, 1981 because his request to have several employees and company officials attend the investigation indicated that the proceeding would be long. It asserts that Rule 30 implicitly recognizes that an employee may lose rest or time if he is subsequently **found** guilty of a charged specification and this interpretative application is relevant where an employee seeking an unjust treatment investigation fails to prove that he was unjustly treated.

In our review of this case, we agree with Organization's position. Rule 30 specifically requires that investigations will be held at such time so as not to cause employees to lose rest or time. It recognizes that charged employees and witnesses will be required to attend investigations during regular duty assignments and it provides for compensatory reimbursement. The only exception allowed is when a charged employee is found guilty of a specified offense.

In the case before us, we cannot conclude that an employe requesting an unjust treatment investigation is in the same classification as an employe charged with a rule violation. The purpose of the Rule 34 investigation is not to establish an **employe's** guilt or innocence but to determine **whether** he was unjustly treated. The consequences that flow from a finding of guilt in a disciplinary hearing are markedly different from a finding that an employe was unjustly treated and this is a pivotal distinction. Whether or not Claimant was unjustly treated is not the defining criterion vis compensatory reimbursement since he was not charged with a rule violation. Paragraph E of Rule 30 precludes reimbursement **only** when an employe is found "responsible as charged", and this is not the case herein. Moreover, in the absence of compelling proof that the parties traditionally equated disciplinary guilt findings with negative unjust treatment findings, we have no other option, other than to apply literally the explicit exception provided by Paragraph **E** of Rule 30.

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;

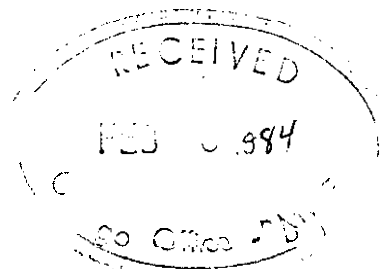
That the Carrier and the **Employes involved** in this dispute are respectively Carrier and **Employes** within the meaning of the Railway Labor Act, as approved **June 21, 1934**;

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

That the Agreement was violated.


A W A R D

Claim sustained.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, **this** 15th day of December 1983.