

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25057  
Docket Number CL-24209

Herbert Fishgold, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
(  
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9515)  
that:

1. Carrier violated the effective Clerks' Agreement when, on June 17, 1980, it called Clerk A. J. Berta to attend two (2) investigations on one of his assigned rest days and refused to compensate him accordingly;

2. Carrier shall now compensate Mr. Berta for eight (8) hours' pay at the time and one-half rate of Position JT-576 for June 17, 1980.

OPINION OF BOARD: By letter dated June 11, 1980, Claimant was charged with two separate offenses and notified that a formal investigation would be held on June 17, 1980 to develop all facts and determine his responsibility, if any, relative to the charges contained therein. There being no request for a postponement, the investigations were held on June 17, 1980 as scheduled with both Claimant and his representative in attendance.

From the facts developed at the June 17 investigations, it was determined that Claimant was responsible as charged. Consequently by letters dated June 20, 1980, he was assessed a three-day and a ten-day suspension respectively. These suspensions are not directly pertinent to the instant claim.

Petitioner alleges that Carrier violated the Agreement Rules, in particular Rules 29 and 43, when it required Claimant to attend the investigations on one of his rest days on his current position of JT 576, and, therefore, Claimant is entitled to be compensated at one day's pay. Rules 29 and 43 read as follows:

"RULE 29  
INVESTIGATION AND HEARING - WHEN HELD

Investigations and hearings shall be held when possible at home terminal of the employees involved and at such time as not to cause the employees to lose rest or time. Employees shall have reasonable opportunity to secure the presence of representatives and/or necessary witnesses."

"RULE 43  
NOTIFIED OR CALLED

Except as provided in Rule 44, employees notified or called to perform work not continuous with, before, or after the regular work period shall be allowed a minimum of three (3) hours for two (2) hours work or less, and if held on duty in excess of two (2) hours, time and one-half shall be allowed on the minute basis.

An employee notified or called to perform work on any of his regularly assigned days of rest, or on any holiday specified in Rule 48 will be allowed a minimum of eight (8) hours pay at the time and one-half rate."

The primary issue involved in this dispute is whether an employee who attends a discipline investigation in which he is the charged party, and is subsequently found guilty of the charge, is contractually entitled to be paid for day(s) of attendance at the hearing.

In the absence of a specific provision in an agreement that a charged party shall be paid for attendance at a discipline investigation hearing it is the practice in the railroad industry, as recognized by this Board, that the employee is not contractually entitled to pay for time in attendance at the hearing. See, e.g., Awards 21320 and 22844.

The record before the Board contains no evidence of probative value that on this property payment to a charged party, who is found guilty of the charge, has been historically and customarily paid as requested in this case. Neither Rules 29 nor 43 supports payment for attendance at an investigation. Such attendance is not considered the performance of work.

.As the Organization has not in this case presented a sufficient body of evidence to sustain its position, we therefore must deny this claim. Notwithstanding denial of the instant case, we do by way of dicta suggest that the Carrier when scheduling investigations arrange them so that they will not cause the charged employee to lose time or rest.

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

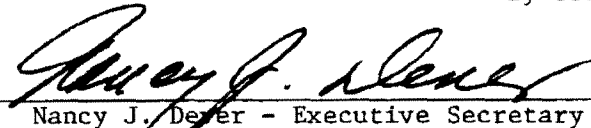
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 4th day of October, 1984.

