NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25286

THIRD DIVISION

Docket Number CL-24942

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Delaware and Hudson Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9692) that:

(a) Carrier violated the Agreement, specifically Rule 8(A) when, on May 5, 1981, Claimant C. J. Penzone was required to attend a Carrier investigation as witness for Carrier but refused to compensate Claimant Penzone for time in attendance.

(b) Claimant Penzone be compensated four and one-half hours pay at the pro rata rate for May 5, 1981.

OPINION OF BOARD: Claimant Penzone was regularly assigned as a Telegrapher-Clerk OR the 11:00 p.m., to 7:00 a.m. shift at Hudson. Pennsylvania. He was directed to appear at a hearing on the morning of May 5, 1981, at Scranton, Pennsylvania. He attended the hearing for four and one-half (4 1/2) hours. Carrier relieved Claimant from duty on Nay 4th and May 5th to'avoid a violation of the Hours of Service Law. It did not, however, pay Claimant for the time in attendance at the hearing. Petitioner contends that Claimant should have been paid for that time, even though he was relieved from duty and paid for the shift before and after the hearing date. Petitioner relies on Article No. 8 of the Controlling Agreement for its support. Article No. 8 reads as follows:

"ARTICLE NO. 8

"(A) Regularly assigned employes required by Carrier to attend court or inquest, to act as witnesses, or ot perform other services of a like nature for the Carrier will be furnished transportation plus legitimate expenses and be paid for the actual wages lost from their position and/or actual time with a minimum of (3) hours at pro rata rate for time devoted to such service outside of assigned hours or on rest days...=

Carrier contends that Claimant was properly paid since he was paid for not working the shift before and after the hearing. He was relieved from work so that he could attend the hearing and so that Carrier would not be in conflict with the Hours of Service Act. Article No.8 does not require more.

This Board has reviewed the record and the c&tract language involved here and must conclude that Petitioner's position is the more persuasive. Article No. 8 states that employes who are directed to attend hearings as Carrier witnesses will be paid for all lost time or time spent outside of assigned hours or on rest days. Claimant was in attendance for four-and-one-half hours outside his assigned working hours. Article No. 8 requires that he be paid for this time.

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

Thdt the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1985.