

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(National Railroad Passenger Corporation
(Amtrak) - Northeast Corridor

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it improperly compensated Machine Operator M. Colaianni for attending an investigation on May 8 and June 5, 1984 at which he was exonerated (System File NEC-BMWE-SD-1134).

(2) Claimant M. Colaianni shall be allowed an additional thirteen (13) hours of pay in accordance with Rule 61."

FINDINGS:

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

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was charged with a violation of Carrier's Operating Rules and instructed to appear for a hearing on May 8, 1984, which was postponed at Claimant's request just prior to its commencement. The hearing which was convened on June 5, 1984, lasted three hours on that day and was adjourned. It was reconvened on June 28, 1984 and concluded on that date. Claimant was found not guilty of the charges and was paid three hours at the punitive rate for attendance at the hearing on June 5, 1984.

The Organization contends that Claimant should be paid a call for appearing for the investigation on May 8, 1984, and should be paid a full eight hours at the punitive rate for June 5, 1984, not three hours as Carrier has paid. The Organization is requesting 13 hours' additional pay on behalf of Claimant. (Its claim for additional compensation for June 28, 1984, on which date Claimant worked and was compensated ten (10) hours was not progressed to this Board.)

We find no rule support for the Organization's claim for a call on May 8, 1984. The hearing was set for May 8 by Carrier, but an adjournment was requested by the Claimant. Claimant did not participate in the hearing, so it can be concluded that no service was rendered. The fact that the hearing did not go forward was not the fault of Carrier, but, rather, was at the request of the Claimant. To pay Claimant a call under these conditions would be to invite the Claimant to request postponements whenever a pay situation arose. This would constitute an illogical application of the Rules. The Rules that apply here are quoted below:

"RULE 61

ATTENDING INVESTIGATIONS

Employees required to report for investigation immediately after having finished, or just prior to reporting for work, will, if found not guilty, be allowed continuous time at their regular straight time rate. If required to attend investigations at any other than the above-mentioned times, except when under pay, they will, if found not guilty, be compensated in accordance with Rule 53. This Rule also applies to employees required to attend investigations as witnesses."

"RULE 53

CALLS

(a) Employees notified or called to perform service outside of and not continuous with the regularly assigned working hours, shall report for duty with reasonable promptness and shall be paid a minimum of two hours and forty minutes at the rate of time and one-half, if held on duty longer than two hours and forty minutes, they shall be paid at the rate of time and one-half on the actual minute basis."

As to the second part of the Organization's claim, here too we find no Rule support. Carrier paid Claimant three hours at the overtime rate for attending the hearing on June 5, 1984. Rule 53 specifies that if an employee is held on duty more than two hours and forty minutes, he shall be paid at time and one-half on a minute-for-minute basis. That is what Carrier did in this instance.

Form 1
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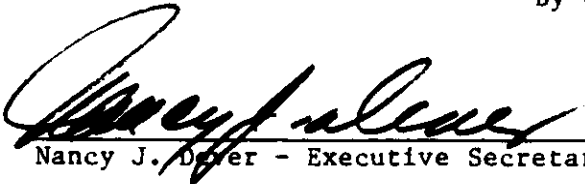
Award No. 27204
Docket No. MW-27053
88-3-86-3-97

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 20th day of July 1988.