

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Union Pacific Railroad Company

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

(1) The Carrier violated the Agreement when it failed and refused to reimburse Mr. T. J. Watson for the expenses he incurred while traveling at the direction of the Carrier on a round trip between Oroville, California and Grand Island, Nebraska on February 4, 5, 6, 7, 8, 9, 10 and 11, 1984 (System File 5-18-13-14-54/013-210-48).

(2) As a consequence of the aforesaid violation, Mr. T. J. Watson shall be allowed nine hundred eighty dollars and three cents (\$980.03) reimbursement for the mileage, meal and lodging expense he incurred from February 4 through 11, 1984."

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.

This Claim for reimbursement of expenses arises out of disciplinary proceedings brought against Claimant by Carrier for alleged theft of Carrier property. The facts behind these charges and logistics of two (2) separate Hearings are set forth in detail in recent Third Division Award 26155.

The propriety of Claimant's discharge was upheld in Third Division Award 26155 and also in PLB 3241, Award No. 2. The Claim before us is for reimbursement of expenses incurred by Claimant in attending the Hearing at Grand Island, Nebraska, which necessitated round trip travel from his residence at Oroville, California.

In a long line of Awards, this Board has consistently denied similar Claims in the absence of clear contract language or proven past practice requiring such payments. Typical of these decisions is Third Division Award 21320, which stated:

"The issue is whether an employe required to attend a discipline investigation in which he is a party charged and subsequently found guilty 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 that the employe is not contractually entitled to pay for time in attendance at the hearing. The confronting Agreement contains no such specific provision; and further, the record before the Board contains no evidence of probative value that on the property here involved payment to a charged party has been historically and customarily paid.

In the industry, provisions of agreement such as Rule 18(c) have generally been held to apply to non-charged employes that are required to attend a discipline investigation hearing to testify as witnesses." (Underscoring added)

See also Second Division Award 8225, Third Division Award 22506, Fourth Division Award 1971.

There is no express contractual language or demonstrated past practice of such payments shown on this record. The thrust of the present claim appears to be an extra-contractual promissory estoppel theory, based upon alleged representations made to Claimant by his former Supervisor at Oroville, California. Claimant asserts that this Carrier Representative assured him that Carrier would reimburse him for expenses of attending the Grand Island, Nebraska Hearing. A party seeking to recover in promissory estoppel must show that he has "clean hands" and that he was misled into changing his position, to his detriment and damage, by misrepresentations of another or an authorized representation of another, upon which he reasonably relied. In this particular case, Claimant and the Organization failed to carry that burden of proof. Bare assertions by Claimant that he sought and obtained permission to drive his vehicle and a promise of reimbursement for expenses were not buttressed by supporting evidence on the property and are denied by Carrier. An undated handwritten note from Claimant setting forth the details of this alleged conversation was not brought forward on the property but was presented de novo in the Submission to this Board. Carrier properly objected to this document and it cannot be considered as evidence in this proceedings. We must deny this Claim for failure of proof.

Form 1
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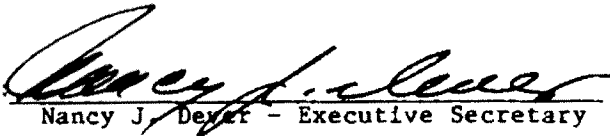
Award No. 27998
Docket No. MW-26476
89-3-85-3-209

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest.


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1989.