

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29972
Docket No. CL-29249
93-3-90-3-268

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

(Transportation Communications International
(Union
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.

STATEMENT OF CLAIM: "Claim of the System Committee of the
Brotherhood (GL-10457), that:

1. Carrier violated the Clerical Agreement when on Tuesday, January 31, 1989, it instructed Clerk N. H. Howard to attend an investigation as a Company witness and then declined payment for five hours spent in the investigation.
2. Carrier shall compensate Clerk N. H. Howard for five hours at the rate of time and one-half for January 31, 1989."

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 employes involved in this dispute are respectively carrier and employe 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.

The Claimant was scheduled to work at Nashville, Tennessee, from 3:00 P.M. to 11:00 P.M. on January 30, 1989, and from 11:00 P.M., January 31 to 7:00 A.M., February 1, 1989. On January 31, 1989, however, the Claimant was required to serve as a Carrier witness at an Investigation at Evansville, Indiana, at 8:00 A.M. These locations are about 160 miles apart, a distance which can be driven in three hours. The Investigation was concluded at 1:30 P.M. on January 31, 1989.

The Claimant was relieved from working her assignments on January 30 and 31, 1989, but received compensation for both shifts as if she had worked. She was also compensated for her mileage and travel time to and from Evansville. She was not, however, paid for the time spent attending the Investigation, for which the Organization now seeks five hour's pay at the rate of time and one-half. The Organization relies upon Rules 19 and 33, which read, in part, as follows:

"RULE 19 NOTIFIED OR CALLED

Employees notified or called to perform work outside of established hours will be allowed a minimum of four (4) hours pro rata for two (2) hours and forty (40) minutes work or less, and if held on duty in excess of two (2) hours and forty (40) minutes time and one-half will be allowed on the minute basis.

RULE 33 ATTENDING COURT, HEARINGS AND
EMPLOYEE INVESTIGATIONS

- (a) Employees taken away from their regular assigned duties at the request of Management to attend court or appear as witnesses for the Carrier will be allowed compensation equal to what would have been earned had such interruption not taken place. When requested to make such attendance for the Carrier outside of assigned hours, they shall be paid under provisions of the first paragraph of Rule 19, except they shall be paid a minimum of one day's pay at pro rata rate for rest days.
- (b) Employees taken away from their regular assigned duties at the request of Management to attend employee investigations as witnesses for the Carrier will be allowed compensation equal to what would have been earned had such interruption not taken place. When requested to make such attendance for the Carrier outside of assigned hours, including rest days, they shall be paid under the first paragraph of Rule 19."

Although the Carrier notes the Claimant could have worked her shift on January 30, attend the Investigation, and return in time to work her shift on January 31, 1989, it asserts it allowed the Claimant to miss the two assignments for her comfort and convenience, allowing her to be well rested for the trip to Evansville and back. The Carrier further argues the Claimant lost no pay as a result of attending the Investigation.

Throughout the handling of this dispute on the property, the Carrier maintained the method of paying the Claimant had been discussed with the Organization's Vice-Chairman at the time payment was made, and the Vice Chairman, who retired shortly thereafter, approved it. Though the Organization insists it has no record of him authorizing such a payment, it does not go so far as to deny he did so. Instead, the Organization argues the Vice Chairman lacked the authority to interpret the Agreement. The Carrier correctly notes this position was first raised in the Organization's submission before this Board. As this is a new argument, we have not given it any consideration in our resolution of this dispute.

At the time the Vice Chairman approved the payment, it is evident the Carrier had reason to believe he had authority to resolve disputes arising under the Agreement. If there was any question as to the proper or appropriate payment to be made to the Claimant, the Vice Chairman gave his concurrence to the manner in which the Carrier intended to pay her. This concurrence constitutes a resolution of the dispute. This was not a private agreement between the Carrier and the Claimant. The Vice Chairman acted in his capacity as a Union official. Once that agreement was made, it was not subject to challenge. To allow a challenge would put all settlements under scrutiny. It does not matter that the Vice Chairman might have agreed to less than the Claimant might be entitled to under the Agreement. Settlements of disputes need not be restricted to the precise terms of the Agreement. If they were, fewer disputes would be settled, which is contrary to the purposes of the Railway Labor Act.

Finding that the dispute herein was already settled on the property, we must dismiss the claim.

A W A R D

Claim dismissed.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of December 1993.