

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30455
Docket No. CL-30795
94-3-92-3-798

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

(Transportation Communications
(International Union
PARTIES TO DISPUTE: (
(Elgin, Joliet & Eastern Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood (GL-10877) that:

1. Carrier violated the effective agreement when it filed frivolous charges again Mr. L. W. Young when it required him to loose time to attend an investigation which found no basis for any finding of guilt and then failed to compensate him for the time lost and the time spent attending the investigation.
2. Carrier shall now compensate Mr. Young the eight (8) hours' pay at the straight time rate of his position which he lost due to Carrier's directive and an additional three (3) hours' pay at the time and on-half rate for attendance at the investigation."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

At times pertinent to this case, Claimant was working as Tower Operator, Kirk Yard Tower, assigned to the "third trick," i.e., Midnight to 8:00 A.M. (Apparently, on this Carrier the Midnight trick is considered the third trick of the prior calendar day).

Under date of July 12, 1991, Claimant was summoned to appear at an Investigation into his alleged failure to detect and report an alleged Rule G violation by his Relief Tower Operator. The hearing was originally scheduled for July 18, 1991, but was rescheduled and eventually held on August 5, 1991, a workday for Claimant. After working the "third trick" on August 4, 1991, Claimant attended the Investigation, which subsequently resulted in his exoneration and dismissal of all charges against him.

As a consequence of attending the Investigation, Claimant was mandated under the Hours of Service Laws to mark off from his next scheduled "third trick" tour of duty, i.e., Midnight to 8:00 A.M. on August 6, 1991. In this claim, the Organization seeks reimbursement for time spent at the Hearing and for the lost work opportunity.

The Parties cited a plethora of countervailing Awards in aid of sustaining or denying this particular Claim. We have focused only upon those prior Awards construing Rules 29, 32, and 43 of the Agreement between these Parties. In Third Division Award 25057 cited by Carrier, the Board rejected a claim for pay for time in attendance at a Hearing by an employee found guilty of all charges. In dicta, the Board in Award 25057 opined:

"Neither Rules 29 or 43 supports payment for attendance at an Investigation. Such attendance is not considered performance of work."

In PLB 4918, Case 17 and PLB 5033, Case 13, cited by the Organization, the Boards held that Third Division Award 25057 was not controlling when the charged employee was found innocent. In those latter cases the Board held that specific language in Rules 29 and 32, respectively, required sustaining claims for pay loss directly or proximately caused by attendance at an Investigation when the Claimant was exonerated of all culpability.

The present matter is clearly governed by the holdings in the latter cited Awards. In this case, the Claimant was cleared of all culpability at an Investigation held outside of his regular working hours. However, his required attendance at the Investigation caused him to miss out on his next regular scheduled tour of duty, because his attendance at the Investigation caused him to become "outlawed" under the Hours of Service Laws. Additional dicta in Award 25057 holds: "Such attendance (at an Investigation) is not considered performance of work." The claim for pay for time spent at the Investigation is not sustainable under the above-quoted dicta from Award 25057; but such attendance was considered "service" by Carrier and the FRA for purposes of "outlawing" Claimant under the Hours of Service legislation. There can be no question, therefore, that his attendance at the Investigation directly caused his loss of pay on the "third trick" on August 5, 1991, i.e., Midnight to 8:00 A.M. on August 6, 1991.

Based upon all of the foregoing, that portion of the which seeks three hours pay at the overtime rate for attendance at the Investigation is denied. That portion which claims eight hours at straight-time rate for work opportunity lost as a direct consequence of attending the Investigation is sustained.

AWARD

Claim sustained in accordances with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of September 1994.