

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31533
Docket No. MW-31191
96-3-93-3-194**

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

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

1. The Agreement was violated when the Carrier failed and refused to compensate Foreman S. Shumski for the time he performed on jury duty on July 2, 3, 4, 5, 8, 9, 10, 11 and 16, 1991 (System Docket MW-2397).

2. As a consequence of the violation referred to in Part (1) above, Claimant S. Shumski shall be allowed eight (8) hours' pay at his straight time rate for each day he served on jury duty, less the amount of jury service pay he received in accordance with Rule 33."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all of 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.

In May 1991 Claimant, who was furloughed at the time, was summoned for jury duty. According to Claimant, because he was expecting to be recalled to active duty

soon, he called, inquired about Carrier's policy concerning jury duty, and was advised that the policy was to pay all wages the employee would have earned had he worked. Claimant began jury duty on June 4, 1991. On June 28, 1991, Carrier offered Claimant a temporary assignment as Foreman, pending advertisement and award of the permanent position. Claimant turned down the assignment because he was still serving on the jury.

The Organization contends that Claimant was misled by Carrier into believing that he would be paid for all time he would have worked had he not been serving on a jury. According to the Organization, if Claimant knew he would not be paid, he would have pled financial hardship, been excused from jury duty, and been available to work the temporary assignment.

Carrier argues that under Rule 33 of the Agreement, Claimant is not entitled to any compensation. Carrier contends that the assignment offered to Claimant was a temporary one and thus, even if Claimant had accepted it, he would not have been entitled to jury duty pay because he would not have been regularly assigned. Rule 33 provides:

"When a regularly assigned employee is summoned for jury duty and is required to lose time from his assignment as a result thereof, he shall be paid for actual time lost with a maximum of a basic day's pay at the straight time rate of his position for each day lost less the amount allowed him for jury service for each such day"

It is clear from the plain language of Rule 33 that jury duty pay is available only to employees who are regularly assigned. Claimant was not regularly assigned. Even if Claimant is treated as having accepted the temporary position, he still would not be regularly assigned and still would not be eligible for jury duty pay.

We are not persuaded by the Organization's contention that Carrier misled Claimant. Claimant's statement indicates that his inquiry about jury duty pay was made in anticipation of being recalled to active status. There is nothing in Claimant's statement which suggests that Carrier made any representations to him concerning the availability of jury duty pay if, while still furloughed, he was unable to accept a temporary assignment because of jury duty. The clear language of the Agreement placed Claimant and Carrier on notice that Rule 33 requires that an employee be regularly assigned to be eligible for jury duty pay.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of July 1996.