

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31735
Docket No. SG-32131
96-3-94-3-447**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Northeast Illinois Regional Commuter Railroad Corporation
((METRA)**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Northeast Illinois Regional Commuter Railroad Corporation (METRA):

Claim on behalf of J. M. Anderson for payment of expenses of \$142.18 incurred on March 8, 1993, account Carrier violated the current Signalmen's Agreement, particularly Rule 23, when it denied the Claimant's request for reimbursement of expenses incurred in conjunction with his representation of Carrier in a court proceeding. Carrier's File No. 11-24-134. General Chairman's File No. S-AV-52. BRS File Case No. 9287-NIRC."

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 were given due notice of hearing thereon.

On March 5, 1993, Claimant, a Signal Maintainer, was given the following memo from Signal Supervisor R. Spargo in light of Claimant's appearance in a court proceeding on behalf of the Carrier:

**"ANDERSON (MONDAY) 1:00 P.M.
DRESS CLOTHES NO BLUE JEANS**

DAISY SMITH	STATE OF ILLINOIS BUILDING
VS	5TH FLOOR FACE OFFICES GO LEFT
METRA	BETWEEN LASALLE & CLARK
	RANDOLPH ST.
	100 W. RANDOLPH STREET"

On March 8, 1993, Claimant purchased a pair of shoes, slacks, a shirt and accessories totaling \$142.18. Claimant sought reimbursement from the Carrier for the cost of those items of clothing, which was denied. This claim followed.

Rule 23 states:

"RULE 23. ATTENDING COURT: Employees attending court, inquests, investigations or hearings, under instructions from the railroad company, will be paid compensation equal to what they would have earned on their regular assignment and if so used on days off duty, they will be allowed (8) hours' pay at the pro-rata rate for each day used. Actual necessary expenses supported by receipts will be allowed while away from their headquarters. Any fees or mileage accruing for such service will be assigned to the railroad company."

The burden in this case is on the Organization to demonstrate the elements of its claim. That burden has not been met.

We need not determine, as the Organization argues, that the memo from Signal Supervisor Spargo to Claimant stating "Dress clothes No Blue Jeans" is an order to Claimant under penalty of discipline to dress accordingly. We also need not determine whether such a request for reimbursement falls under Rule 23. For the sake of discussion, we shall assume in this case as the Organization argues that Spargo's memo was an order and that Rule 23 could cover such a reimbursement request. With those assumptions, the narrow question here, then, is whether Claimant's cost of clothing for the court hearing was an "[a]ctual necessary expense" under Rule 23.

The Organization's burden has not been met in this case because the fundamental *assumption of the argument made by the Organization is the factual contention that Claimant did not possess "Dress clothes" and that all he possessed were "Blue Jeans". But, there is no evidence in the record to support such a factual assertion. All this record shows is that Claimant made certain purchases of clothing. Therefore, even assuming Rule 23 applies to a request for reimbursement for clothing (again, an issue we do not decide), there is no evidence in this case to show that such purchases were "necessary" under Rule 23.*

Just as easily as the Organization can make the assertion without proof that Claimant had to make the clothing purchases because he lacked the appropriate attire called for by Signal Supervisor Spargo, the Carrier can make the assertion that Claimant had items that would fit the description of "dress clothes" and that Claimant just saw the memo from Signal Supervisor Spargo as an opportunity to expand Claimant's wardrobe at the Carrier's expense. But, the burden is on the Organization. Simply stated, we have no proof concerning what was in Claimant's wardrobe. The Organization's burden has not been met — it has not shown that the purchases were "necessary". *Under the circumstances, the claim will be denied.*

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 24th day of October 1996.