Award No. 8206
Docket No. CL-8011

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Sidney A. Wolff, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

THE LONG ISLAND RAIL ROAD COMPANY

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

1. The Carrier violated the Clerks' Agreement on November 16, 1953, when it arbitrarily changed a long established practice of allowing employes pay at the regular rates, less the amount of pay received as jurors, while serving on jury duty in law enforcement courts, and

2. That the Carrier reinstate the established practice in effect as of the effective date of the existing Agreement, namely July 1, 1945 and thereafter until November 16, 1953, and

(b) That Clerk Oscar E. Hesselblad, be paid the amount of $65.03, representing the difference between five (5) days of Jury Duty pay at $3.00 per day and his regular rate of $324.13 per month.

EMPLOYES' STATEMENT OF FACTS: 1. There is in effect a Rules Agreement dated July 1, 1945, covering clerical, other office, station and storehouse employes, between this Carrier and this Brotherhood. The Rules Agreement will be considered a part of this Statement of Facts. Various Rules may be referred to from time to time without quoting in full.

For many years prior to November 1953, it has been an established practice to allow Clerical employes pay at the regular rates, less the amount of pay received as Jurors while serving on jury duty in law enforcement courts. This established practice was arbitrarily discontinued by the Carrier without conference with the Organization on November 16, 1953.

2. On September 24, 1954, Claim was made for Stanley Feldman, Clerk, the Statement of Claim reading the same as that presented for Clerk Hasselblad, except the last paragraph which reads as follows:

"3. That Clerk Stanley Feldman be paid the amount of $106.80 representing the difference between eight (8) days of Jury Duty pay at $3.00 per day and his regular rate of $343.34 per month.

Based on the evidence submitted and for the reasons stated above, the instant claim should be denied.

(Exhibits not reproduced)

OPINION OF BOARD: This claim is grounded in the alleged long established practice of this Carrier to allow their employes on jury service their pay at regular rates less the amount paid them for jury duty.

The Carrier admits the existence of such a practice over the past 25 years but contends it is restricted to salaried employes with service of 15 years or more; that this Claimant only had 11 years of service and thus did not come within the application of the practice.

It is recognized that mere isolated instances may not be converted into an established practice with all the attributes of a binding working condition. Before it may attain the dignity of equality with a contractual commitment, the alleged practice must be widely known and accepted and by long usage considered an integral part of the working conditions of the Carrier. It must be so well known that reasonable persons will not differ over its content; and once it becomes an established practice, it may not be terminated unilaterally. It survives negotiation and renegotiation of a collective bargaining agreement, unless, of course, the agreement itself deals with the subject and makes other provision therefor.

The employes in an attempt to show that the practice is not restricted as claimed by the Carrier point to four other cases, i. e., Messina in 1950, Uber in 1951, Hays in 1952 and Johnson in 1953.

However, viewing these instances against the backdrop of what constitutes an established practice, we find that the evidence submitted in this case by the employes does not measure up to the requisite standards. Impelling is this conclusion when it is observed that in the two most recent examples (Hays and Johnson) payment was made to them in order to make good an unauthorized promise of a supervisor, with the Carrier making it crystal clear at the time that it was doing so "without setting a precedent"; and other than the fact that payment was allowed in the other two cases, the facts surrounding such two cases in 1950 and 1951 were not furnished.

These instances are but isolated cases and are insufficient to overcome the Carrier's position that the practice applies only to its salaried employes with more than 15 years service. In any event, where as here, the employes rely on a practice dehors the agreement, it is incumbent upon them to satisfy us that this case comes within the practice. This has not been done.

The employes lay great stress on the Carrier's refusal to consent to a joint check of its records to ascertain whether in fact there was a restriction on the practice in issue.

Normally the Carrier's refusal to join in the requested check might permit us to draw the inference that such a check would not sustain its position (Award 7350) but we may not draw any such unfavorable inference in this particular case since the Carrier's records, it claims, for the prior years concerning jury service payments were no longer available.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That, so far as this record shows, the Carrier did not violate the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 8th day of January, 1958.