Award No. 18038
Docket No. TE-17350

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David L. Kabaker, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

CHICAGO GREAT WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Chicago Great Western Railway, that

1. Carrier violated the Agreement between the parties when it failed and refused to compensate G. R. Hoisington, telegrapher-clerk at Chicago Transfer, Illinois for the service of acting as witness for the Carrier at investigation held on December 23, 1965 and April 25, 1966.

2. Carrier shall be required to compensate G. R. Hoisington five (5) hours' pay at the straight time rate for December 23, 1965 and four (4) hours' pay at the time and one-half rate for April 25, 1966.

EMPLOYES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

This dispute is based on the provisions of the Agreement between the parties, effective June 1, 1948 (reprinted May 1, 1958), as amended and supplemented. This Agreement (and its supplements and amendments) is available to your Board and by this reference is made a part hereof. This dispute involves two separate claims in behalf of G. R. Hoisington for compensation due him for attending discipline hearings in the capacity of a witness for the Carrier.

(b) ISSUE

The issue here involved is whether or not the Carrier is liable for compensation to an employe who acts as a Carrier witness at discipline hearings involving other employes. It is the contention of the Organization, and such was made in the handling on the property, that Claimant is entitled to compensation for this service, which was performed outside his regularly assigned hours.

was remanded in accordance with Opinion of Board in Award 11221, reading in part:

> "We must therefore remand the claim before us for further negotiations between the parties. If negotiation fails, their proper forum is the National Mediation Board."

The Employes also resorted to the same tactics in dispute pending adjudication by the Third Division in Docket TE-16095.

It is quite evident you recognize that the instant claims are not actually supported by the rules in effect on this property and that accounts for your reliance on Third Division Awards 4569, 6679, 6736, 10509 and 14124, involving disputes under rules in effect on other railroads. However, the governing rules in our dispute are the rules agreed to by the parties in N.M.B. Case A-2772, which clearly rejected compensation for attending investigations in both Rule 15 (Attending Court — Witnesses) and Rule 5 (Notified or Called).

Yours truly,

/s/ D. K. Lawson
Vice President — Personnel

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The Employes have not denied history of negotiations leading to adoption of Rules 5 and 15 in National Mediation Board Case A-2772, as set forth by Carrier in the foregoing letter dated June 19, 1967, but subsequently combined their claims dated December 23, 1965 and April 25, 1966, as set forth in "Statement of Claim" herein and submitted entire dispute to the Third Division, National Railroad Adjustment Board, in letter dated July 20, 1967.

OPINION OF BOARD: Claimant, who occupied a position the duties of which included handling a crew board, was on two occasions required by Carrier to attend investigations, concerning irregularities in use of crew members, outside his regular hours.

He claimed pay for the time consumed in each case. Employes cited Rule 15(b) as being specifically applicable; and when Carrier disagreed they cited Rule 5(a), contending that one or the other must apply.

Rule 15(b) reads as follows:

> "Employes attending court or acting as witnesses outside of their assigned hours, at the request of the Carrier, will be paid pro rata rate for the actual time devoted to such attendance."

The main thrust of Carrier's contentions is that this rule relates solely to court attendance. The language does not admit of such a narrow meaning. It would negate the phrase "or acting as witnesses". It is well settled that the Board may not properly revise a rule by interpretation.

Since the rule clearly limits the payment to pro rata both claim will be allowed at that rate.

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

That the parties waived oral hearing;

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 the Agreement was violated.

AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July 1970.

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