

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21320
Docket Number CL-21276

John H. Dorsey, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, GL-7869, that:

1. Carrier violated the Clerks' Rules Agreement, and in particular Rule 18(c), when it required Mr. J. R. Trout, Jr., to attend an investigation on February 7, 1974, and then failed and refused to compensate him at the appropriate rate of pay (Carrier's file 380-3177)

2. Carrier shall now be required to compensate Mr. J. R. Trout, Jr., \$42.23 for February 7, 1974, which amount represents the appropriate rate of pay of his regular assignment of Customer Service Clerk No. 020.

OPINION OF BOARD: On January 24, 1974, Carrier served upon Claimant the following notice requiring him to appear as a charged party at a formal investigation. The notice in pertinent part reads:

Report to Trainmaster's Office, Room 5, 1000 W. 4th, North Little Rock, Ark., 1:30 P.M. Tuesday, January 29, 1974, for formal investigation, to develop the facts and place responsibility, if any, for your alleged failure to secure disposition on car TP 613883, carload steel, set out by Train 741 at Kensett, January 17, 1974, account hot box, and listing this car for movement Kensett to North Little Rock no-bill.

The investigation was postponed at the request of Claimant's Representative. It was re-set for February 7, 1974, and was held on that date which was a work day of Claimant's regular assignment.

On March 4, 1974, Carrier found Claimant guilty as charged and dismissed Claimant from service. He was later reinstated on a leniency basis.

On April 4, 1974, Claimant filed the instant claim for a day's pay for his attendance at the hearing on February 7, 1974, and cited Rule 18(c) as supporting the claim. That provision of the Agreement reads:

Employees called by Carrier to attend investigation will be compensated at the appropriate rate of pay.

The issue is whether an employee required to attend a discipline investigation in which he is a party charged and subsequently found guilty is contractually entitled to be paid for day(s) of attendance at the hearing.

In the absence of a specific provision in an agreement that a charged party shall be paid for attendance at a discipline investigation hearing it is the practice in the railroad industry that the employee is not contractually entitled to pay for time in attendance at the hearing. The confronting Agreement contains no such specific provision; and further, the record before the Board contains no evidence of probative value that on the property here involved payment to a charged party has been historically and customarily paid.

In the industry, provisions of agreement such as Rule 18(c) have generally been held to apply to non-charged employees that are required to attend a discipline investigation hearing to testify as witnesses.

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 Employees involved in this dispute are respectively Carrier and Employees 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 Carrier did not violate the Agreement

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1976.

