

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22358

Docket Number CL-21673

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(The Atchison, Topeka and Santa Fe
(Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8125) that:

(a) Carrier violated the terms of the effective Agreement at Bakersfield, California, on Wednesday, January 29, 1975, when it failed and/or refused to compensate Claimant for jury duty; and

(b) Carrier shall now compensate Mr. H. P. Brown for eight (8) hours pay at pro rata rate of his regular position No. 9319/6273 for January 29, 1975, as a result of violation of Agreement.

OPINION OF BOARD: Claimant was called for jury duty and following his rest days on which he performed such duty, he was scheduled to go on jury duty at 9:30 A.M. to 4:00 P.M., Wednesday, January 29, 1975. He was also required to report for jury duty on Thursday at 9:30 A.M. His regular schedule required him to report for work for a tour which started at 11:30 P.M., Wednesday, January 29th and terminated at 7:30 A.M. on Thursday (as a Relief Clerk). Claimant was paid for the jury duty performed but, after being granted time off on Wednesday night (January 29th) by Carrier at his request, he was not compensated for that night's work.

Rule 39 of the Agreement is controlling in this dispute. It provides:

"RULE 39 -- JURY DUTY (effective 1-1-73)

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, excepting allowances paid by the court for meals, lodging or transportation, subject to the following qualification requirements and limitations:

- (1) An employee must exercise any right to secure exemption from the summons and/or jury service under federal, state or municipal statute and will be excused from duty when necessary without loss of pay to apply for the exemption.
- (2) An employee must furnish the carrier with a statement from the court of jury allowances paid and the days on which jury duty was performed.
- (3) The number of days for which jury duty pay shall be paid is limited to a maximum of 60 days in any calendar year.
- (4) No jury duty pay will be allowed for any day as to which the employee is entitled to vacation or holiday pay.
- (5) When an employee is excused from railroad service account of jury duty the carrier shall have the option of determining whether or not the employee's regular position shall be blanked, notwithstanding the provisions of any other rules."

Petitioner argues that Claimant was required to lose time from his assignment as a result of jury duty. Carrier contends that Claimant could have worked his regular assignment on Wednesday night and still could have performed the jury service. Carrier states that there was no time conflict between Claimant's regular assignment and the two jury-duty periods. He was not, according to Carrier required to lose time from his assignment as a result of the jury duty, but he merely elected to do so. Carrier relies, in part, on Second Division Awards 6435 and 6295. In Award 6435 the Board held that the fact that an employee was off duty because of jury duty does not automatically prove that he had actually lost time and pay from his regular work. We concur in the reasoning expressed in that award but also note that in that case the facts were substantially at variance to those herein since there was a picket line in effect at the time of the jury service and the Board held that Claimant would not have worked those days in

any event. In Award 6295 a different factual circumstance existed in that Claimant worked both his regular assignment and served his jury duty within the same twenty-four-hour period and subsequently claimed what amounted to punitive pay for the day since he had not been released to perform his jury duty. Thus, it appears that there are no prior awards which deal directly with the issue herein.

It is noted that Carrier in its rebuttal statement alludes to a totally unrelated dispute in which Petitioner is alleged to have insisted on long consecutive hours of work as being appropriate under the Agreement. While Carrier's rhetorical reliance on the analogous circumstance is understandable, it is totally irrelevant to the resolution of this dispute.

This Board is asked herein to construe the meaning of the phrase "required to lose time from his assignment" when an employee is summoned for jury duty. First, we cannot agree with Carrier's construction which, carried to a logical extreme, would require an employee to report for jury duty after a sixteen-hour stint at work, as long as the hours of work did not conflict with the jury-duty hours. This could mean consecutive 24-hour periods with no time whatever off (or loss of pay) when an employee is called for jury duty. Even without the overtime hypothesis, the proposition that an employee may be required to work for eight hours and then serve on the jury, on penalty of loss of pay, is unreasonable. In short, Carrier would have the rule apply only when the hours of service conflicted. In our judgment, this interpretation would place a strained and unlikely meaning on the terms used in the rule. Our consideration is not based on equity but on the principle that a rule which may be ambiguous must be interpreted reasonably. Rather than the interpretation of Carrier, it is our judgment that any jury duty occurring within the twenty-four-hour period, starting at the beginning of an employee's regular work day, shall require him to lose time from his assignment under this rule, on that day. It was not the intent of the parties, as we see it, for an employee to be required to work a regular tour of duty and serve on a jury within the same twenty-four-hour work day. The Claim must be sustained to the extent permitted by Rule 39.

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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 the Agreement was violated.

A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 16th day of March 1979.

