

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22844
Docket Number CL-22763

George E. Larney, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8675)
that:

(a) The Carrier violated the Clerks' Agreement when they refused to allow Mr. Grover C. Harman eight (8) hours pay and mileage allowance for September 29, 1976.

(b) Claimant Harman now be allowed eight (8) hours pay at the pro rata rate of \$56.16 per day.

(c) Claimant Harman now be allowed \$18.00 mileage allowance Lee Hall, Virginia to Richmond, Virginia and return.

OPINION OF BOARD: Claimant, Grover C. Harmon, holding a regularly assigned position of Agent-Operator-Clerk, Monday through Friday, 8:00 A.M. to 5:00 P.M., at Carrier's Lee Hall, Virginia facility, was informed by Carrier in a letter dated September 20, 1976, that an investigation would be held on September 29, 1976, at Richmond, Virginia in connection with the following charge:

"* * * making a false statement to the Chief Train Dispatcher on Friday, September 10, 1976 that your September 13 through September 17, 1976 vacation dates had been changed and reporting for work on your assignment of Agent-Operator-Clerk at Lee Hall, Virginia on September 13, 1976 without proper authorization thereby causing additional expenses to the carrier when a vacation relief employee was sent back to Richmond, Virginia, from Lee Hall, Virginia."

Petitioner alleges that Carrier violated Agreement Rules, in particular Rule 27(a) and Rule 54(b), when it required Claimant to attend the investigation on a regularly assigned day during regularly assigned hours and therefore Claimant is entitled to receive eight (8) hours pay at the pro-rata rate in addition to mileage allowance for driving his personal automobile from Lee Hall to Richmond, Virginia and return. Rules 27(a) and 54(b) of the

Controlling Agreement bearing effective date of March 1, 1972 read as follows:

"RULE 27 - INVESTIGATIONS, REPRESENTATION, APPEAL, ETC.

(a) An employee who has been in the service 60 days or more, or whose application has been approved, will not be disciplined or dismissed without investigation. He shall have a fair and impartial investigation at which he may be represented only by one or more duly accredited representatives of his own choice. An employee may, however, be held out of service pending such investigation. When necessary to call an employee to the office for investigation, he will be called at such time as will not cause him to lose time and, if possible, not cause him to lose rest.

An employee will within a reasonable time prior to the investigation be apprised in writing of the specific charge or charges against him, with copy to the Local Chairman, and will have reasonable opportunity to secure the presence of necessary witnesses and duly accredited representatives. The investigation will be held within 10 days from date charged with the offense or held out of service (unless an extension of time is agreed to between the proper officer and Local Chairman). The investigation and decision will be confined to the specific charge or charges, and the decision will be rendered within 10 days after completion of the investigation. All investigations will be in writing unless mutually agreed otherwise between the Management and Local Chairman. Two copies of the transcript will be furnished the duly accredited representatives of the employees on request."

Rule 54(b) provides:

"RULE 54 - PAY FOR DEADHEADING

(b) Where an employee is required to travel from his headquarters point to another point outside the environs of the city or town in which his headquarters point is located, the Carrier will furnish free transportation or reimburse the employee for the cost of rail fare or other transportation. If the employee is willing to use his private automobile and the Carrier authorizes him to do so, he will be paid the established mileage allowance of not less than ten cents per mile, it being understood that the Carrier may not require the employee to use his private automobile.

"NOTE: When an employe is traveled by automobile, he shall be paid for all time traveled, including the first hour, or part thereof, as he will begin his travel only in time to reach the work point. The same principle will apply on his return, etc."

The primary issue involved in this dispute is whether an employe who attends a discipline investigation in which he is the charged party, and is subsequently found guilty of the charge, is contractually entitled to be paid for attendance at the hearing, including travel expenses incidental thereto.

The record before the Board contains no evidence of probative value that on this property payment to a charged party, who is found guilty of the charge, has been historically and customarily paid as is requested in this case. Rule 27(a) does not support payment for attendance at an investigation. Rather Rule 27(d) provides the measure of damages applicable in discipline situations. Neither does Rule 54(b) support payment of travel expenses to a regularly assigned employe incident to attendance at an investigation.

As the Organization has not in this case presented a sufficient body of evidence to sustain its position, we therefore must deny this claim. Notwithstanding denial of the instant claim, we do by way of dicta suggest that the Carrier when scheduling investigations arrange them so that they will not cause the charged employe to lose time from his/her assignment.

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 not violated.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

AW. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 16th day of May 1980.