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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23918
Docket Number CL-23253

Rodney E. Dennis, 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-8926)
that:

(a) Carrier violated the provisions of the current Clerks' Agreement at Bakersfield, California, on May 3, 1977, when it notified Claimant J. J. Werla that he would not be allowed jury duty pay compensation for Monday, April 25, 1977, for performing jury duty service, and

(b) Carrier shall now compensate Claimant J. J. Werla for eight (8) hours' pay at the pro rata rate of his regular position, Crew Clerk Position No. 6273, for April 25, 1977, as a result of violation of Agreement rules, and

(c) In addition to the money amounts claimed herein, the Carrier shall pay an additional amount of ten per cent interest per annum, compounded annually on the anniversary date of claim.

OPINION OF BOARD: J. J. Werla, Claimant in this case, is regularly employed in clerk position No. 6273 at Bakersfield, Ca., on the 11:30 p.m. to 7:30 a.m. shift. Tuesdays and Wednesdays were his rest days.

Claimant was called for jury duty. He worked from 11:30 p.m. on Sunday night to 7:30 a.m. on Monday morning. He reported for jury duty at 9:30 a.m. on Monday morning and remained there until 4:30 p.m.

Claimant requested that he be authorized a jury duty leave day under Rule 39 of the agreement for Monday, since he would again have to work all night Monday and report for jury duty on Tuesday morning. Carrier denied Claimant's request on the basis that the jury duty did not conflict with the hours of his work assignment. Claimant layed off Monday night, but received no pay. He eventually filed the instant claim for one day's pay under Rule 39, Jury Duty.

That rule reads in pertinent part as follows:

"When a regularly assigned employe 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."

The Organization contends that it is an unreasonable interpretation of Rule 39 to require Claimant to serve on jury duty and work an eight-hour shift within the same 24-hour period. It also argues that the identical case, occurring on this property with the same parties, has recently been decided by this Board (Award 22358, Lieberman). In that award, the Organization's position was upheld. Given the strong emphasis on precedent in this industry and the labor relations stability attributed thereto, this Board should sustain the instant claim.

Carrier, on the other hand, argues that Award 22358 is palpably erroneous and should not be followed. It cites Second Division Award 6295 (Bergman), to support its position.

After extensive review and discussion of the record and the cases submitted on both sides of the issue, it is the opinion of this Board that this claim should be sustained on account Claimant was required to appear for jury duty and was required to work 11:30 p.m. - 7:30 a.m. Rational consideration would tell one that such a schedule could not be maintained for any length of time. As the union stated in its presentation, if Claimant had not been granted leave for Monday evening, he would have been allowed to rest five out of 40 hours. We think that such a situation does not fall within a reasonable interpretation of Rule 39.

This employee was subject to long hours when the time serving on jury duty and time on the job were considered together and this is an unreasonable application of Rule 39. As to petitioner's claim for interest, we find no authority in the Schedule Agreement to support such a demand.

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 Employee involved in this dispute are respectively Carrier and Employee 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 violated the Agreement.

A W A R D

Claim sustained in accordance with the Opinion.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of June 1980.