

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23926
Docket Number CL-23268

Carlton R. Sickles, Referee

PARTIES TO DISPUTE: { (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8934) that:

(1) Carrier violated the Clerks' Rules Agreement at Bensenville, Illinois when it arbitrarily and willfully deducted \$40.3912 from the first half of January 1978 and \$121.1736 from the first half of February 1978 payroll checks of Employee R. A. Bleau for a total deduction of \$161.5648.

(2) Carrier shall now be required to reimburse the \$161.5648 to Employee R. A. Bleau which was deducted from his first half January 1978 and first half February 1978 payroll checks.

OPINION OF BOARD: The claimant seeks payment for time lost because he was on jury duty, under the provisions of the rule which provides as follows:

"When a regularly-assigned employee is summoned for jury duty and is required to lose time from his assignment as a result thereof, he should 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..."

The claimant's work assignment was from 11:00 P.M. to 7:00 A.M. the following morning. The jury service began at 9:00 A.M. on each day involved.

The question at issue is whether the phrase "required to lose time from his assignment" is applicable in this instance since the times of the jury duty were not co-extensive with his work times.

The Organization cites Award 3-22358 in support of its position. The factual situation is substantially identical to the instant case. The claim was sustained on the basis that an employee could not be required to work a regular tour of duty and serve on a jury within the same twenty-four hour work day.

Three other Awards involving jury service were cited.

In Award 2-6295, the claimant was denied his appeal for time and one-half for the time he spent working his regular shift, when he worked both his regular shift, from 11:30 P.M. to 7:30 A.M., because the Carrier would not excuse him, and also performed his jury duty starting at 9:30 A.M.

In Award 1-23199, the claimant was denied compensation because his assignment did not work on the day that he performed jury duty service.

In Award 2-6435, the claim was denied because the claimant could not have performed his normal duties since there was a strike, and it was not alleged that the claimant would cross the picket line.

Of the last three Awards, only 2-6295 is of support to the cause of the Carrier as the relief sought, although slightly different, was based upon the concept that the interpretation of the rule should be construed to apply only when the work assignment and the jury duty were at the same time of day.

Carrier members of this Board filed a dissent in Award 3-22358, and in the instant matter continue to aver that the decision in Award 3-22358 was an unfounded maverick decision which wrote new provisions into the rules in spite of a long-standing principle that this Board may not add to existing rules in any manner.

In essence, we are asked by the Carrier to overrule the principle adopted in Award 3-22358 and return to the interpretation of Award 2-6295 which said the language is "clear and specific".

Unfortunately, this Board does not find the language clear and specific.

The Carrier is, in effect, contending that the phrase, "required to lose time from his assignment as a result thereof", includes the concept "because he can't be performing his assignment and performing jury duty at the same time". But the rule doesn't say that. The Carrier's interpretation is logical and reasonable, but not necessarily the only one. Such an interpretation may, in itself, be considered adding to the existing language, a concept which the Carrier rejects.

In point of fact, the language is incomplete and ambiguous and may be reasonably subject by the parties to the interpretation of either Award 3-22358 or Award 2-6295.

Mindful again that we are not to add to the rules, this does not, however, relieve our responsibility to make an interpretation which will carry out the intention of the bargaining parties as we can best determine or estimate what it was in reviewing the language of the provision.

The Board in Award 3-22358, was attempting to do just that. Whether we agree with that Award in all its concepts or not, we cannot say that it was palpably erroneous on its face, particularly the approval of the specific claim.

Given the facts in that case, it was not improper to conclude that the claimant should not be expected to work all night and perform jury duty shortly thereafter. The Carrier members seem to support this result because in their dissent, they indicated at the outset that they did not object to the sustained conclusion. Also at the end of the dissent, they indicate that if the Referee had "sustained the claim based upon the 'obvious long hours' which the claimant in this case would have experienced on jury duty and on the job, there could have been little if any challenge to his interpretation of the agreement".

The Carrier members do not accept the notion that allowing the claimant to receive the jury pay is a valid interpretation of the rule, but they do not object to recognizing that it is appropriate to allow the claimant to recover under these circumstances. We do not agree with Carrier in this instance. We believe that it is a permissible interpretation of the rule, in the facts in this case, that the claimant was "required to lose time" as a result of his jury duty. We don't support the interpretation of the rule which precludes recovery unless the jury duty and the work hours are the same.

We find that it is a valid interpretation of the rule to authorize the claimant to receive jury duty pay when his work hours are 11:00 P.M. to 7:00 A.M., and he is required to report for jury duty shortly thereafter. When he does not work these hours in anticipation of his jury duty which follows shortly thereafter in order that he may be physically and mentally capable of performing this duty, he has been "required to lose time from his assignment as a result" of the jury duty and the claim will be sustained.

We find it unnecessary to address any broader application of the rule and confine our decision to the specific facts in this case.

The claimant should receive jury duty pay for each tour of duty immediately prior to his jury service. On this record claimant is entitled to payment for January 3, 9 and 10, 1978.

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 in accordance with the Opinion.

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 1982.

