

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it failed and refused to compensate Repairmen R. Martin and J. Morris for attending a hearing held for Mr. A. H. Rosenberry on September 26 and 27, 1984 (System Dockets CR-1332 and CR-1335).

(2) Because of the aforesaid violation, Repairmen R. Martin and J. Morris shall each be allowed eight (8) hours of pay (\$138.96) at their time and one-half rates."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

In connection with an Investigative Hearing concerning another employee, the Claimants appeared at the Hearing following the close of their tour of duty on September 26, 1984. The Claimants gave testimony. There is no dispute that the witnesses were called to the Hearing at the request of the employee under investigation and not by the Carrier. The record also indicates that the Claimants were not required to absent themselves from their work because of their presence at the Hearing.

The Organization argues that the Claimants are entitled to pay for the eight hours involved in their appearance at the Hearing, while the Carrier contends that they are not so entitled.

At issue is the Interpretation of two Rules, which read as follows:

RULE 27

"Section 1

. . .

(e) If the employee desires to be represented at the hearing, he may be accompanied by his union representative. The accused employee or his union representative will be permitted to question the witness insofar as the interests of the accused are concerned. An employee shall make his own arrangements for the presence of witnesses appearing in his behalf, and no expense incident thereto shall be borne by the Company."

"RULE 21 - PAYMENT FOR ATTENDING INVESTIGATIONS
AND HEARINGS

(a) Where practicable, investigations and hearings will be held during assigned working hours.

(b) When attending an investigation or hearing by direction of an officer of the Company, during his working hours, either regular or overtime, an employee shall not suffer any loss of compensation.

(c) An employee required by the Company to attend an investigation or hearing immediately after having finished, or just prior to reporting for work, and continuous therewith, shall be compensated at the overtime rate for the time spent in attending such investigation or hearing outside of his working hours.

(d) When attending an investigation or hearing by direction of the Company on an assigned rest day, an employee shall be compensated for the time so spent with a minimum of three (3) hours at the straight time rate of his position. If such employee would have been entitled to work on such day, he will be allowed compensation at the time and one-half rate for the number of hours he would have worked had such interruption not taken place and at the straight time rate for any additional time attending the investigation or hearing.

(e) When attending an investigation or hearing by direction of the Company on a holiday which falls on a day on which an employee is normally assigned to work, such employee will be compensated for the time so spent as though he had worked.

(f) For attending an investigation or hearing by direction of an officer of the Company at any time other than those mentioned above, an employee shall be compensated for the time so spent, with a minimum of three (3) hours at the straight time rate of his position.

(g) The above provisions do not apply to the time spent attending an investigation or hearing outside his assigned hours for an employee found guilty.

(h) Actual, pertinent witnesses who attend investigations or hearings will be paid in the same manner as applicable by this Rule."

The Organization points in particular to Rule 21(h) which provides that, "Actual, pertinent witnesses who attend investigations or hearings will be paid in the same manner as applicable by this Rule." The parties disagree as to whether the testimony of the Claimants as witnesses was "pertinent", but the Board finds this immaterial to the resolution of the dispute.

The Board does not find the two Rules in contradiction to each other. Rule 27, Section 1(e) clearly states that the "arrangements for presence of witnesses appearing in [the employee's] behalf" shall be without "expense" to the Carrier. The Organization argues that "expense" refers to other matters than pay, but there is no support for this contention. "Expense" is normally taken to mean any monetary outlay.

As to Rule 21, Sections (a) through (g) all refer to an employee attending a Hearing, "at the direction of an officer of the Company"; required by the Company"; or "by direction of the Company." Only Section (h) refers to witnesses, who "will be paid in the same manner as applicable by this Rule." Thus, the "same manner" can only refer to those attending at the Carrier's direction, obviously not applicable to the two Claimants herein.

When this reading is coupled with the "no expense" to the Carrier provided in Rule 21, pay for the Claimants is not sanctioned.

The Board notes that the dispute here is limited to a situation in which the Claimants were not deprived of work opportunity because of their appearance at the Hearing. This is not to suggest that the Board's conclusion would differ in such a situation but does indicate that the findings are based on the specific facts before the Board.

A W A R D


Claim denied.

Form 1
Page 4

Award No. 27490
Docket No. MW-27019
88-3-86-3-58

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of September 1988.