Form 1 **NATIONAL RAILROAD ADJUSTMENT BOARD**
THIRD DIVISION

Award No. 44905
Docket No. SG-47268
23-3-NRAB-00003-220369

The Third Division consisted of the regular members and in addition Referee Michael D. Phillips when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Canadian Pacific Railway

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Canadian Pacific Railway (formerly Soo Line):

Claim on behalf of B. Humphrey, for 12 hours paid at his respective straight-time rate of pay, reimbursed $108.03 for the hotel, and reimbursed $295.12 for mileage; account Carrier violated the current Signalmen's Agreement, particularly Rule 25, when Carrier instructed the Claimant to attend a formal Investigation on February 1, 2021, in the St. Paul Yard, 527 miles from the Claimant's house, which resulted in a loss of expenses and wages to the Claimant. Carrier's File No. 2021-00020692. General Chairman's File No. 2021-00020692. BRS File Case No. 5388. NMB Code No. 317."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

By letter dated January 27, 2021, Claimant B. Humphrey was notified to attend a hearing to develop the facts and place responsibility, if any, in connection with a signal failure at Vermillion Control Point on January 21, 2021. The hearing was held February 1, 2021, after which the Claimant was found to be in violation of the rules set forth in the notice of investigation, and by notice dated February 11, 2021, he was assessed a 45-day suspension. We have addressed the discipline assessment in Case No. 3-220390 on our current docket.

The Organization submitted the instant claim on February 24, 2021, alleging that the Claimant should be paid 12 hours at his straight time rate, and that he should be reimbursed for hotel charges and mileage for use of his personal vehicle when he traveled to the investigation. It cited Rule 25 of the CBA, which provides as follows:

> **Rule 25 – Attending Court or Investigation**
>
> **Employees attending court, inquests, investigations or hearings under instruction from the Railroad Company will be paid compensation equal to what they would have earned outside or during their regular assignment for each day so used. Actual expenses will be allowed while away from headquarters. Any fees or mileage accruing for such service will be assigned to the railroad company.**

The claim stated that the Claimant was instructed to attend a formal hearing, and that the Carrier violated Rule 25 when it did not compensate him for attending the hearing or reimburse him for personal vehicle use and hotel expenses.

The Carrier denied the claim, stating that the Claimant was called to an investigation under the discipline rule and that he was being withheld from service without pay at the time the hearing was held.

The Organization submitted an appeal, disputing the Carrier's interpretation of Rule 25. It stated that the rule required payment to the Claimant for attending the hearing, and that whether he was being withheld from service had no bearing on the requirement to pay compensation and expenses for employees attending investigations.

The Carrier denied the appeal, stating that it was improper and procedurally defective. It stated that the Organization had filed an appeal with respect to the discipline assessment in which it was also seeking pay for time lost, including the hearing date, and it asserted that the instant claim was therefore excessive.

The parties discussed the matter in conference, after which the Carrier sent a confirmation letter, again stating that the instant claim was defective. It cited rule 32(i) of the CBA, which states that an employee who has been unjustly disciplined will be made whole, including pay for the date of the hearing. The Carrier stated that Rule 25 is intended to require payment when the company requires an employee to miss work to represent the company, but that it is not intended to require payment of wages or expenses for an employee missing work to attend their own investigation. The matter now comes to us for resolution.

The parties' positions are essentially the same as those described in the on-property handling. The Organization points to the language of the notice of investigation which stated "arrange to be present at the above-mentioned date, time and place . . ." as being a directive to attend the hearing, thus entitling the Claimant to pay and expenses for doing so. It states that the language of Rule 25 is clear and unambiguous, and that it compels the Carrier to compensate the Claimant for attending the investigation under instructions from the railroad.

The Organization denies that this claim is duplicative of the claim challenging the Claimant's discipline. It states that this claim is for a specific remedy provided for by Rule 25, whereas the claim based on Rule 32 is a request for lost wages for other days on which the Claimant lost work opportunities.

The Organization also argues that the Carrier's interpretation would undermine due process and render the agreement language without meaning. It states that if employees are not paid for attending their own investigations, then they are punished for defending themselves through the loss of pay. The Organization cites prior Third Division awards which have interpreted similar agreement provisions, and which have held that employees were entitled to pay for attending their own disciplinary investigations. It also cites award authority for the principle that, unless an agreement expressly provides for an exception, none can be inferred or granted by the Board, and it states that the agreement at issue contains no exception which would allow the Carrier to deny the requested payment just because the investigation at issue involved the Claimant's own disciplinary hearing.

The Carrier, on the other hand, reiterates its position that the claim is procedurally defective in that the date of claim is already being pursued in the discipline appeal. It cites Rule 32 and its provision that employees found to have been unjustly disciplined will be paid any wage loss suffered as a result of the discipline, and it notes that the Organization has requested such payment in the discipline claim, including the

date of the investigation. The Carrier maintains that it is improper for the Organization to progress two separate claims seeking payment for the same lost wages.

The Carrier argues that Rule 25 is intended to address employees who are instructed to attend a court hearing, investigation, or inquest as a representative of the company, but not for an employee notified to attend a hearing regarding their own alleged misconduct. It asserts that it has been the historical practice, under this agreement and across the industry, that employees are not paid for attending their own disciplinary hearings, and that the historical method for seeking payment for wages lost while attending a disciplinary hearing is through the discipline appeal, as the Organization has filed on the Claimant's behalf already. The Carrier concludes that the Organization has not met its burden of establishing an agreement violation, and it requests that the claim be denied.

We have thoroughly reviewed the parties' arguments, and we find that the Organization has not met its burden of establishing an agreement violation. While Rule 25 refers to payment of lost earnings and expenses for employees attending "investigations or hearings under instruction from the railroad company," we do not believe that language contemplates payment for an employee attending an investigation into allegations of their own misconduct. We believe that the proper venue for seeking such compensation is through the discipline appeal process set forth in Rule 32, which contemplates payment for lost wages, which we take to include time spent at a disciplinary hearing if the employee is not found to be at fault.

The Organization has cited prior Third Division awards which addressed employees' claims for pay for attending their own disciplinary hearings, but we do not find them to require a different conclusion. We first note that they address a different property and different agreement language. We also note that the Boards there concluded there was evidence of a past practice of paying employees for attending their own hearings, but there is no such evidence here. The Carrier here specifically denies any such practice, and that position is consistent with the fact that we are addressing several other discipline cases on our current docket in which there is no indication that such payment was made or that a claim was progressed seeking such payment separate from the discipline appeal.

In any event, it appears to us that the awards referenced by the Organization are outliers in this industry, and that the carrier dissent to the initial award is more persuasive in its citation of multiple awards which have found no such payment to be required for an employee attending their own disciplinary hearing. We concur with its observation that if an employee is found to have committed misconduct, they are not

entitled to pay for attending the hearing which established as much. Employees who are found blameless have their remedy under the discipline rule.

We do not believe our holding renders the agreement language meaningless or surplusage. We believe that language clearly requires the Carrier to pay employees under instruction to attend investigations as witnesses, and that our holding is consistent with the parties' own handling of such matters, at least until the instant claims arose. We have been provided with no evidence that employees attending their own investigations have ever been paid for doing so unless they are exonerated or that a claim of this nature has ever been progressed before, and we believe that such history, or lack thereof, is consistent with the Carrier's assessment of the rule.

As noted above, we have also addressed the discipline assessed the Claimant, and we have sustained that claim. As such, the Claimant is entitled to wage loss for the period he was withheld from service, which includes the hearing date in question here, but his remedy is associated with the discipline case, not this one.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 21st day of April 2023.