

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45236
Docket No. MW-46425
24-3-NRAB-00003-210236**

The Third Division consisted of the regular members and in addition Referee Melinda Gordon when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division –
IBT Rail Conference**

**PARTIES TO DISPUTE: (
(BNSF Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to properly compensate employee B. Stowers for time spent participating in a disciplinary investigation (inquest) on October 3, 2019 (System File 2600-SL17-1986/14-20-0028 BNS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant B. Stowers shall now be compensated eight (8) hours’ pay at his respective rate of pay for October 3, 2019.””**

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.

The Organization brought a claim against the Carrier on behalf of the Claimant due to the Carrier's failure to pay Claimant for attending his disciplinary investigation. After the investigation, Claimant received a Level S 30-day record suspension with a three year review period pursuant to the Carrier's Policy for Employee Performance and Accountability ("PEPA").

The Organization cites various provisions under the Agreement to support that, Claimant is entitled to reimbursement for attending his disciplinary hearing. The Carrier submits that the Agreement only provides for Claimant's reimbursement if he is exonerated or called as a Carrier witness.

The Organization avers that Rules 13, 15, 17, 31, and 34 are controlling, asserting that Rule 17(a) and Rule 13(j) authorize payment to a Claimant who attends a disciplinary investigation or "inquest." Rule 17, Attending Court and Jury Duty provides as follows:

17(a) - Attending Court. Employees taken away from their regular assigned duties at the request of the Carrier to attend court, inquest or to appear as witnesses for the Carrier shall be allowed compensation equal to what would have been earned had such interruption not taken place. An employee who works his assignment for the day or any portion thereof and is required by the Carrier to devote his time to such service outside his regular assigned hours shall be paid a minimum of three (3) hours for two (2) hours or less actual time required to be in attendance, and if in excess of two (2) hours, time and one-half will be allowed on the minute basis, in addition to payment for his assignment.

Contrary to the Carrier's characterization, the Board finds that Rule 17(a) is limited in application to attendance at judicial/Court proceedings where the Carrier specifically requests the individual attend the proceeding as a witness for the Carrier. It is not applicable to the target of the investigation.

After an in-depth examination of the Organization's other contractual arguments, the Board finds that Rule 13 grants an exonerated employee compensation after the investigation. Rule 13 (f) provides as follows:

Employees Unjustly Suspended or Dismissed. If after investigation it is found that an employee has been unjustly suspended or dismissed from the service, such employee shall be reinstated with seniority rights

unimpaired and “compensated for the net wage loss, if any, resulting from said suspension or dismissal.

Where the Carrier requests an employee to act as a witness for the Carrier, the Carrier will also grant compensation. Rule 13 (j) provides:

Employes Acting as Witnesses. Employes acting as witnesses in investigations for and at the request of the Carrier will be allowed compensation equal to what they would have earned had such interruption not taken place. Employes used outside their regularly assigned hours of service will be paid under the provisions of Rule 33-(a) for attending the investigation and will be subject to Rule 37-(b) with respect to transportation and travel time. If used on holidays or on their assigned rest day(s), they will be paid under the provisions of Rule 33-(h). Employes acting as witnesses for and at the request of the Carrier at investigations which are held at a station other than that at which they have their headquarters will be reimbursed for actual necessary expenses incurred for meals and lodging. Employes authorized to make use of highway bus transportation or their private automobiles in attending investigations as witnesses for and at the request of the Carrier will be reimbursed for bus fares and for the use of their private automobile at the authorized mileage rate.

Based on the Board’s examination of the foregoing, the Organization’s application is denied

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 28th day of March 2024.