

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45242
Docket No. MW-46510
24-3-NRAB-00003-210029**

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 M. Johnson for time spent participating in a disciplinary investigation (inquest) on July 16, 2019 (System File 0518-SL17-192/14-19-0357 BNS).**
- (2) The Agreement was violated when the Carrier failed and refused to properly compensate employee M. Rogers for time spent participating in a disciplinary investigation (inquest) on July 8, 2019 (System File 2600-SL17-191/14-19-0358).**
- (3) As a consequence of the violation referred to in Part (1) above, Claimant M. Johnson shall now be compensated eight (8) hours pay at his respective rate of pay for July 16, 2019.**
- (4) As a consequence of the violation referred to in Part (2) above, Claimant M. Rogers shall now be compensated eight (8) hours pay at his respective rate of pay for July 8, 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 Claimants due to the failure to pay Claimants for attending their respective disciplinary investigations. After the investigations the Claimants were dismissed by the Carrier pursuant to the Carrier's Policy for Employee Performance and Accountability ("PEPA").

The Organization cites various provisions under the Agreement to support that Claimants are entitled to reimbursement for attending their disciplinary investigations. The Carrier submits that the Agreement only provides for a Claimant's reimbursement if the employee is exonerated or called by the Carrier as a witness.

The Organization avers that Rules 13, 15, 17, 31, and 34 are controlling, asserting that 17(a) authorizes 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 proceedings 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 the Carrier grants employees' compensation for attending the investigation only in specific circumstances. Rule 13(f) provides for compensation if the employee is exonerated after the investigation. Rule 13 (j) provides for compensation where the Carrier requests an employee to act as a witness. 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.

Rule 13 (j) provides:

Employees Acting as Witnesses. Employees 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. Employees 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). Employees 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. Employees 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.