

PUBLIC LAW BOARD NO. 1844

AWARD NO. 55

CASE NO. 49

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it required Messrs. C.T. Woolridge, G.P. Larson, M.O. Rand, D.C. Olson and D.J. Kodesh to attend an investigation on Saturday, May 14, 1977 and refused to compensate them for the time thus expended (Carrier's File 81-19-152).
- (2) Messrs. C.T. Woolridge, G.P. Larson, M.O. Rand, D.C. Olson and D.J. Kodesh each be allowed nine hours' pay at their respective time and one-half rates because of the violation referred to within Part (1) of this Statement of Claim."

OPINION OF BOARD:

All of the Claimants in this case were brought up on charges and required to attend a Hearing and Investigation on Saturday, May 14, 1977. On the basis of the record developed at that hearing, Claimant Olson was exonerated, but the other three claimants received suspensions without pay. In a separate claim they appealed that discipline and we disposed of the merits of that case in our recent Award No. 38 (Case No. 43). For reasons developed fully in Award No. 38, that claim was sustained and the discipline was rescinded.

In the instant claim, the Claimants all seek reimbursement for time spent traveling and attending the hearing on Saturday, May 14, 1977. Each of the Claimants is a regularly assigned member of a track gang with a Monday-

Friday workweek, Saturday and Sunday rest days. They assert that since they were required on their rest day to attend the Hearing and Investigation in which they were the accused, they are entitled under Rule 31 to payment at the time and one-half rate. Carrier resists the claim on the grounds that Rule 31 has no application at all in the facts herein and Rule 19, which provides for payment to witnesses, does not apply to accused employees.

In sum, Carrier maintains that there is no Agreement support for the payment which Claimants seek and that this Board does not have authority to grant such payment absent Agreement support. We have examined the record and the arguments and we find that Carrier is correct. We concur with the holdings in Third Division Award 21320 as follows:

In the absence of a specific provision in an agreement that a charged party shall be paid for attendance at a discipline investigation hearing, it is the practice in the railroad industry that the employee is not contractually entitled to pay for time in attendance at the hearing. The confronting Agreement contains no such specific provisions; and further, the record before the Board contains no evidence of probative value that on the property here involved payment to a charged party has been historically and customarily paid.

See also, Awards 2-5870 and 2-6421.

FINDINGS:


Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:

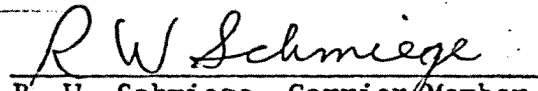
1. that the Carrier and Employees involved in this dispute are, respectively, Carrier and Employees within the meaning of the Railway Labor Act;
2. that the Board has jurisdiction over the dispute involved herein; and
3. that the Agreement was not violated.

AWARD

Claim denied.


Dana E. Eischen, Chairman


H. G. Harper, Employee Member


R. W. Schmiede, Carrier Member

Dated: May 17, 1979