Inland Steel Award No. 753
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ALLOWED TIME AND REPORTING PAY
GRIEVANCE NO. 28-R-6
AWARD NO. 753

SUMMARY: Employee who was subpoenaed to appear as a witness in an unemployment compensation hearing at 10 a.m. on a particular day was entitled to be excused from a scheduled shift which would not have ended until 7:30 a.m. on that day and to receive a witness allowance for that day. It was unreasonable for the Company to expect grievant to get from the Plant to the hearing site in the short time involved and to remain there until excused. While the hearing ended by 12:30 p.m., there was no way for grievant to know how long his presence might be required. Nothing in the Con tract or in past practice required grievant to have sought some sort of accommodation before the date of the occurrence.

COMPANY: INLAND STEEL CO.
PLANT: INDIANA HARBOR
DISTRICT: 31
ARBITRATOR: CLARE B. McDERMOTT
DATE OF DECISION: SEPTEMBER 19,1985
STATEMENT OF THE GRIEVANCE:
"The Company violated the contract when it failed to pay employee, M. Dunham, #9727 for a day he was subpoenaed as a witness.
"Relief Sought: The aggrieved be paid all monies lost.
"Violation is Claimed of Article 3 Section 1, Article 9 Section 10 of the Collective Bargaining Agreement."
BACKGROUND
This grievance claims violation of Article 3, Section 1, and Article 9, Section 10 of the March 1, 1983 Agreement in Management's refusing to pay grievant a witness-service allowance.
Grievant is a Craneman in No. 3 Cold Strip Mill East Department. On Tuesday, March 29, 1983, he received by registered mail a subpoena requiring that he appear as a witness at an Indiana Employment Security Board hearing at 10:00 a.m. on Tuesday, April 5, at 2105 Broadway, in East Chicago, Indiana. As of Thursday, March 31, 1983, grievant was scheduled to work the 11:30 p. m.-7:30 a.m. shift on Tuesday, April 5, through Saturday, April 9, 1983.
Grievant reported off prior to his scheduled April 5, Tuesday turn (11:30 p.m. Monday-7:30 a.m. Tuesday) and did not work that turn. He appeared as one of five witnesses in a proceeding for unemployment compensation by a former fellow employee against the Company. The hearing lasted from 10:00 a.m. through 12:30 p.m. Grievant later submitted proof that he had been subpoenaed and had appeared and requested a witness allowance under Article 9, Section 10. Management denied his request, and this grievance followed.
The Indiana Board hearing in East Chicago was held at a building approximately .8 of a mile from the Plant, requiring a 20- or 25-minute drive from the Plant.
Grievant lives in Hammond, about 4.8 miles from the Plant. Grievant says it is approximately six miles, with stoplights, city traffic, and trains to be encountered.
Section 10 of Article 9 reads as follows:
"Section 10. Allowance for Jury or Witness Service. An employee who is called for jury service or subpoenaed as a witness shall be excused from work for the days on which he serves. Service, as used herein, includes required reporting for jury or witness duty when summoned, whether or not he is used. Such employee shall receive, for each day of service on which he otherwise would have worked, the difference between the payment he receives for such service in excess of $5.00 and the amount calculated by the Company in accordance with the following formula. Such pay shall be based on the number of days such employee would have worked had he not been performing such service (plus any holiday in such period which he would not have worked) and the pay for each such day shall be eight (8) times his average straight-time hourly rate of earnings (including applicable incentive earnings but excluding shift differentials and Sunday and overtime premiums) during the last payroll period worked prior to such

service. The employee will present proof that he did serve or report as a juror or was subpoenaed and reported as a witness and the amount of pay, if any, received therefor."

The Union notes that grievant was scheduled to work the first turn on April 5, the date he was subpoenaed and appeared as a witness, stressing that the language of the Agreement says the employee shall be excused from work on days on which he serves and shall receive for each "day" of service a witness allowance. The Union argues that the word "day" in that provision means here all of Tuesday, April 5, from 12:01 a.m. to 11:59 p.m. and does not refer only to the daylight hours.

It is argued that it was not reasonable for the Company to expect grievant to work from 11:30 p.m. to 7:30 a.m. and then appear as a rested, competent witness at a 10:00 a.m. hearing, which well could have lasted for the entire business day. The Union notes, in any event, that grievant had no way of knowing, prior to the hearing, how long it would last.

The Company stresses that grievant would not have had to work during the time of the hearing and that it would have taken only about 20 or 25 minutes for him to drive from the Plant to the site of the hearing. That is, it is said that grievant's scheduled turn of work did not conflict directly with his appearing in obedience to the subpoena.

The Company argues that arbitration awards in the industry have held that jury or witness allowance is due only in those circumstances where the interval between the conclusion of a scheduled turn of work and the beginning of jury or witness service on the same day is nonexistent or so brief as to preclude the employee's traveling to and participating in such service or to preclude his getting a reasonable period of rest between one activity and the other. The Company says neither such circumstance existed here.

Management points out that grievant was off the two days (Sunday and Monday) before his witness service. He thus had an opportunity to rest before the first turn of his scheduled week and his appearance as a witness and to rest also for a few hours after his work and before his witness appearance and before his next turn of work.

The Company cites a 1961 U.S. Steel award by the present Arbitrator and a 1967 Bethlehem award by Arbitrator Seward. The Union says those decisions are not governing here.

Management notes that, had grievant worked as scheduled on Monday and Tuesday, April 4 and 5, he would have had two and one-half hours off between his work and witness service and 11 hours off between his witness service and his next scheduled turn. In light of that time off and what it says were only short driving distances and times, that is, about .8 of a mile from the Plant to the hearing site, requiring perhaps 20 or 25 driving minutes, and 4.8 miles from the Plant to his home and approximately four miles from his home to the hearing location, the Company says grievant reasonably should have worked and that it was not unreasonable for it to have denied his claim for a witness allowance. It argues that grievant's witness service did not come so close before or after his scheduled turn of work and that the driving distances were not so great as to preclude him from getting a reasonable period of rest after work and before his appearance as a witness as well as after his witness service and before his next scheduled turn.

The Company stresses that the Agreement and the history of working practices in the industry make plain that the parties anticipated that there would be circumstances in which an employee would have to work eight hours and then double over for another eight-hour turn, immediately after the first one, for a period of 16 consecutive hours of active work. Grievant here had two and one-half hours of rest time after his turn of work and before his witness service, and the Company says, in view of the common occurrence of employee's working 16 consecutive hours, grievant had no reasonable basis for not working his scheduled April 5 turn.

The Secretary of the Grievance Committee said this was the first case in his experience (about 60 such cases) of denial of a claim for witness allowance. He said that in some of the situations in which a witness allowance had been granted, the employee was scheduled on a midnight shift, as here. The witness could name none of those employees except one.

The Union witness said also that Management had cancelled 9:00 or 10:00 a.m. meetings with the Union in cases where a Foreman who would be needed at the meeting had worked the midnight shift because it did not want him to have to remain at the Plant. One such cancelled meeting in these circumstances was said to have occurred just two weeks prior to the Step 4 Meeting in this grievance. He said also that Management has rearranged scheduled meeting times from 3:00 p.m., for example, to 8:00, 9:00, or 10:00 a.m. so that a Foreman could go straight from work to the morning meeting and would not have to wait around for a longer period of time. The witness agreed that the Union has requested postponement of a scheduled meeting if an employee witness were not available, but he said that did not cover a schedule conflict. In that case, he said that, if an employee witness were on the midnight turn and were supposed to be at a 9:00 a.m.

meeting, the Union would report the employee off from that midnight turn, and the Company allegedly always excused the witness.
The Company notes that there is no Agreement provision for a witness allowance in the case of a scheduled Step 3 or 4 meeting, as opposed to the present situation.
Grievant said it normally takes about an hour from the time he is relieved in his crane cab by the next turn's Craneman until he gets home.
Grievant did not speak to anyone in Management before he reported off about possible ways to deal with this problem. He said he thought he would be too tired to appear as a witness if he were to work the shift ending at 7:30 Tuesday morning. He was not advised of that. He heard that the other employee witnesses at this hearing received a witness allowance, but they were scheduled on day turn.
Management insists that the two and one-half hour length of the hearing is relevant, and the Union disagrees. It says grievant, as a witness, could not know how long it would take and had no control over its length.
General Foreman Amatulli testified he has worked the midnight turn in the past when he was a Turn Foreman, and that when he did he would remain at the Plant and would attend meetings and investigations. He said he would hold over a Foreman off a midnight turn for an 8:00, 9:00, or 10:00 a.m. meeting but not for a 3:00 p.m. meeting. Similarly, he said he has come out early in order to attend grievance meetings and then has worked his scheduled turn.
The Company would take comfort from the fact that grievant received the subpoena on March 29, and was aware of his schedule as of March 31 and thus knew of the possible problem five days before the April 5 date of the hearing, and yet he did not come to Supervision and request some kind of accommodation and change in his schedule, which it says he could have done if he really feared there would have been a conflict. Management says others have been so accommodated and that grievant would have been so accommodated here.
FINDINGS
The Company is correct in stressing that there was no direct conflict here between grievant's work and witness service. That is, it is true that grievant would not have been called upon to be in two places at the same time, at work and at witnessing. It is equally true that there was no indirect conflict, in the sense that the time between the end of grievant's 11:30 p.m. to 7:30 a.m. shift and the beginning of his witness duty at 10:00 a.m. was not so short that he could have done the necessary traveling from one to the other in the time involved.
But those two conclusions do not end the matter. Neither the language of Article 9, Section 10, nor the authoritative arbitration decisions demand that kind of impossible conflict in order to justify a witness jury allowance. The Company argues in this regard that the demands on grievant's stamina here would have been less than he would have experienced had he worked a "double," that is, had he worked two consecutive shifts, for a total of 16 consecutive hours, a common occurrence in the industry. That may be, but it has little to do with rational administration of the witness allowance provision. It is not an Olympic event, in which only the most enduring may prevail. It is to be administered by a rule of reason applied to each set of circumstances that arise, so as to bring about a reasonable and practical application of the provision.
Pursuant to that goal, it does appear here that an employee called for witness duty at 10:00 a.m. who would not have finished his eight-hour shift until 7:30 a.m., who thereafter would have had to clean up, change clothes, and drive, either directly to the hearing site where he would have had to wait around, or to his home and then to the hearing site, did indeed have the two events sufficiently close together that he would not have had a chance for a reasonable period of rest between the end of his work and the beginning of his witness service. Thus, he was entitled to the witness allowance.
Application of the rule of reason does not admit of detailed analysis or explanation of the reasoning involved. It is largely a matter of judgment in each case as to whether the facts fall on one side of the line or the other. Moreover, in light of this resolution of the problem, it will not be necessary again to rule on Union arguments about what the word "day" should be read to mean in Article 9, Section 10. The U. S. Steel and Bethlehem decisions cited by the parties deal adequately with all those arguments as to identical language.
One Company argument appears to suggest that the need for rest between the two activities applies only before the work shift and after the witness service, and not after the work and before the witness service. That simply cannot be embraced. The need for a reasonable period of rest between the two activities applies no matter which one should come first.

The Company notes that the hearing lasted only two and one-half hours, until 12:30 p.m., and says, therefore, that grievant surely could have performed his witness duty and lasted through a two and one-half hour hearing or even could have asked to go first and to be excused immediately, with only two and one-half hours between his being relieved in the crane cab and the beginning of the hearing.

Some of that would be more relevant if grievant had reported off and sought a witness allowance for the turn beginning at 11:30 p.m. on April 5. But grievant worked that turn. It is the April 5 turn, beginning at 11:30 p.m. on April 4, that is in question.

Appearing as a witness, grievant was in no position to predict how long the hearing would last, when he would be called, how long or hard he would be questioned, or whether, if he had requested that he testify first and then be excused, his request would be granted. Grievant is not a lawyer, and even lawyers cannot always predict accurately how long a given proceeding will take. Moreover, it would not be at all unusual if grievant had to remain until the case were fully presented in order to learn if he would be needed as a rebuttal witness. The subpoena itself directs that the witness "...not depart without leave of said Referee or Review Board." All in all, therefore, it is not realistic to assume that grievant could have known in advance that his witness duty would be over at 12:30 p.m. It well might have taken much longer.

Management contends also that, since grievant knew of the necessity to respond to the subpoena for several days before the April 5 in question, he should have approached Supervision, told it of the possible problem, and requested some kind of accommodation. It is not clear what kind of accommodation is suggested. The General Foreman says he has accommodated employees before posting the schedule, but he insisted also that he never had changed any employee's schedule, once posted. It thus is not easy to see what the Company means by its position on this. In any event, however, and no matter what the Company might mean, the suggestion cannot carry much weight here, for there is, first, no indication that the employees in general or grievant in particular ever had been notified of this option, and there is nothing in the relevant Agreement provision that would require grievant to seek such accommodation, without Management's solicitation. It might be one thing if the parties jointly were to sponsor such a program of accommodation, but the Arbitrator cannot impose one on them or on this grievant in the circumstances of this case.

Accordingly, since application of the rule of reason developed for resolution of these problems on a case-by-case basis shows that grievant did not have time for a reasonable period of rest between the end of his shift at 7:30 a.m. and the beginning of his witness obligation at 10:00 a.m., he was entitled to be excused from his 11:30 p.m.-7:30 a.m. shift on April 5 and to receive a witness allowance for that day under Article 9, Section 10. The grievance thus will be sustained.

AWARD

The grievance is sustained, and grievant shall be paid the amount calculated under Article 9, Section 10.