

Award No. 1364

Docket No. 1273

2-C&EI-CM-'50

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 20, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That Carmen Wilbur Cooksey and John Simpson are each entitled to be compensated for 8 hours at the straight time rate for services rendered the carrier outside their regular hours on August 26, 1947.

EMPLOYES' STATEMENT OF FACTS: Carmen Wilbur Cooksey and John Simpson, hereinafter referred to as the claimants, are employed by this carrier at Evansville, Indiana, and on August 26, 1947, their regular assigned hours were from 3:00 P. M. to 11:00 P. M. On August 26, 1947, these claimants, at the direction of Foreman Kerchief, were in conference with the carrier's legal counsel from 9:00 A. M. to 11:00 A. M. preparatory to their appearing in court the next day as witnesses for the carrier in the case of this carrier vs. the Wheeling Packing Company for which service these claimants have not been paid.

This dispute has been appealed in accordance with the provisions of the agreement effective July 15, 1944, to the highest carrier officer to whom disputes are subject to be appealed, with the results that this officer has declined to make any satisfactory adjustment.

POSITION OF EMPLOYES: It is submitted that within the meaning of Rule 16 of the controlling agreement reading in part as follows:

"Employees taken away from their regular assigned duties to
* * * appear as witnesses for the railroad * * *."

It is indisputable that these claimants, on August 26, 1947, appeared for consultation with carrier's counsel, as witnesses for the railroad. It is further submitted that on the aforesaid date, these claimants appeared between the hours of 9:00 A. M. and 11:00 A. M., which hours were outside their regular hours, and that within the meaning of the second sentence of Rule 16 reading:

"If so used outside of regular hours, they will be allowed eight
(8) hours at their regular rate * * *"

they should have been paid 8 hours at their regular rate for the service rendered and the Honorable Board Members are respectfully requested to so find.

In denying claim in Award 2132 of the Third Division for time consumed by a telegrapher on his rest day account attending an investigation (O.R.T. vs. Southern Pacific Railroad Company), Referee Sidney St. F. Thaxter stated:

"The awards are not in harmony on this particular problem. It seems to us, however, that it is not advisable, even to reach a result which might appear equitable, to attempt to read into a rule something which is not there. The weight of authority, as well as sound reason, supports this principle."

In Award 4993 of the First Division, involving claim of a trainman for mileage and expenses account giving deposition before a Justice of the Peace in connection with a fatal accident, Referee Mitchell held that under the language of the rule covering, "claimant did not serve as witness at court" and declined the claim.

The facts in the instant case are clear—claimants did not attend a court session—nor an inquest. They merely conferred for a matter of approximately two hours with carrier's counsel. There being no provision under Rule 16, or any other rule of the agreement, for compensating them under these circumstances, and as they worked their regular shifts and lost no time on the date in question, suffering no loss of earnings whatsoever, carrier respectfully submits that the claim is without merit and should be declined by your Honorable Board.

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

The parties to said dispute were given due notice of hearing thereon.

The claim here made is based on Rule 16 of the parties' agreement effective July 15, 1944. The facts are not in dispute. Rule 16 is a specific rule captioned: "Attending Court or Inquests." The facts of this case do not bring claimants within the specific situations to which the provisions of Rule 16 are applicable.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 1st day of February, 1950.