

Award No. 4576
Docket No. 4340
2-NYNH&H-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 17, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier deprived James B. Davitt, Jr., of his right-ful earnings on Friday, March 24th and Monday, March 27, 1961.
2. That accordingly the Carrier be ordered to additionally compensate James B. Davitt, Jr., in the amount of two (2) hours at the half ($\frac{1}{2}$) time rate for Friday, March 24th and three (3) hours at the half ($\frac{1}{2}$) time rate for Monday, March 27, 1961.

EMPLOYEES' STATEMENT OF FACTS: James B. Davitt, Jr., hereinafter referred to as the claimant, is employed by the New York, New Haven & Hartford R.R.Co., hereinafter referred to as the carrier, as a car inspector in the carrier's New Haven, Conn., car yards, with regularly assigned hours of 8:00 A. M. to 4:00 P. M., Saturday and Sunday as rest days.

On Friday, March 24, 1961 claimant was ordered, by the carrier, to appear in court, in New York City, 72.5 miles from his home terminal, as a witness for the carrier, before the court. The claimant departed from New Haven at approximately 8:00 A. M. 3/24/61 and arrived back in New Haven at 8:00 P. M., 3/24/61, a total of twelve (12) hours.

He was paid as follows:

8:00 A. M. to 4:00 P. M. — straight time
4:00 P. M. to 6:00 P. M. — time and one-half
6:00 P. M. to 8:00 P. M. — straight time

On Monday, March 27, 1961, the claimant was again sent to New York, to appear before the Court on the same case. He departed New Haven at approximately 8:00 A. M., 3/27/61 and arrived back in New Haven, from New York, at 7:30 P. M. and was paid as follows:

In summary, it is the position of the carrier that:

1. The sole payment to which Mr. James Davitt is entitled for being held off his regular assignment on March 24 and March 27 is one day's pay at straight time.

2. The employes concede there is no provision under the rule for the payment of travel or waiting time.

3. The employes by their failure to except to the standing interpretation over a period of seventeen years have, in effect, assented to the carrier's interpretation.

4. That the instant claim finds no support either in rule of practice and should for all the reasons set forth here be denied.

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.

Parties to said dispute waived right to appearance at hearing thereon.

Claimant is a Car Inspector at Carrier's New Haven, Conn. Car Yards. His regularly assigned hours are from 8:00 A. M. to 4:00 P. M., Saturday and Sunday as rest days.

On Friday, March 24, 1961, Claimant was ordered by the Carrier to appear on its behalf in New York City as a witness in Court. Claimant left New Haven at 8:00 A. M., and returned at 8:00 P. M.

On Monday, March 27, 1961, Claimant was again ordered to New York City for the same reason and was away from New Haven from 8:00 A. M. to 7:30 P. M.

Claimant is seeking compensation at the time and one-half rate for the time spent on this assignment in excess of his regular eight hour assignment.

Rule 22 of the controlling agreement reads as follows:

"Employes taken away from their regular assigned duties at the request of the Management, to attend court or investigations or to appear as witnesses for the railroad, will be furnished transportation and will be allowed compensation for each day equal to regular assignment, and in addition, necessary actual expenses while away from headquarters. Any fees or mileage accruing will be assigned to the railroad.

Employes attending court or investigations or appearing as witnesses for the railroad and at the request of the Management immediately before or after the hours of their regular assignment will be paid

for the time so held at the time and one-half rate with the minimum allowance of one hour.

If so used during layoff time and not continuous with, either before or after the regular day, or on days not regularly assigned to work, regular assigned employees will be paid for the time so held at time and one-half with a minimum allowance of two hours and forty minutes.

* * * * *

It is Carrier's contention that the Claimant, under the first paragraph of the rule, is entitled only to his straight time for eight hours on the days in question, which were days of his regular assignment.

Claimant maintains that the first paragraph must be read with the second paragraph of the rule, and that the time he was held after his regularly assigned hours should be compensated at the time and one-half rate.

A careful reading of the rule, and a fair evaluation of its intended purpose leads us to the following conclusions:

Paragraph one of the rule was designed to properly compensate the employee who is deprived of a day's work because of the requirements of management. He is reimbursed so that he is no worse off than if he had been allowed to work his shift on that day.

Paragraph two applies to an employee who in fact does work his shift for which he is regularly compensated, but since he is held over, either immediately before or after his regular workday, he is additionally compensated.

Paragraph three is not applicable, nor involved in the instant dispute.

We hold that each paragraph of the rule is severable in that each applies to a different situation. Under the circumstances involved in this dispute, the Claimant was entitled to be reimbursed for a day's pay equal to his regular assignment of eight hours.

AWARD

Claim 1: Overruled.

Claim 2: Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1964.