

Award No. 3066

Docket No. 2714

2-RDG-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 109, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

READING COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Car Inspectors J. E. Jeffers and M. C. Wagner were unjustly dealt with when the Carrier declined to compensate them for their required service outside their bulletined hours on April 12, 1956.

2. That accordingly the Carrier be ordered to compensate these aforesaid employes, one hour each at the overtime rate and one hour each at the straight time rate of pay.

EMPLOYEES' STATEMENT OF FACTS: Car Inspectors J. E. Jeffers and M. C. Wagner, hereinafter referred to as the claimants, were regularly employed by the carrier at Bridgeport, Pennsylvania; assigned hours 7:00 A.M., to 3:00 P.M.

April 12, 1956, the carrier ordered these claimants to attend a pre-trial conference held in the legal department's offices, Reading Terminal, Philadelphia, Pennsylvania, in connection with a suit against the carrier (McGill vs Reading Company). These claimants, as ordered, reported for this service during their regular assigned tour of duty and were held over their regular assigned hours until 3:20 P.M., at which time they were released and then they had to travel to their home point, Bridgeport, Pennsylvania.

For this service as required of them by the carrier, the claimants each turned in a service card for additional time, other than the eight (8) regular hours of service, in the amount of one hour (1) at the overtime rate of pay and one (1) hour at the straight time rate of pay; to date the carrier has declined to pay them anything therefor.

the Reading Company by an engine service employe. This conference extended from 2:00 P.M. until 3:20 P.M. For their attendance at this conference, claimants were paid for service performed on their regular assignment at Bridgeport, Pa., plus time lost at home station or a total of eight hours at straight time rate plus \$1.50 expense for lunch.

In the progression of this case on the property, the brotherhood contended that second paragraph of Rule 24 of the effective agreement was applicable and supported the claim as presented.

The carrier does not agree with the contention of the employes and submits that Rule 24 reads as follows:

“When by request of the Company, employes are used as witnesses at inquests or in suits brought or defended by the Company or other Company business, they will be furnished transportation, and will be allowed pay for time lost at home station plus legitimate expenses; all witnesses' fees to accrue to the Company.

When summoned to attend Company's investigation in which they are not directly involved, they will be paid on the same basis; if required to report outside of regular bulletined hours they will be paid as per Rule 7.”

It is the position of the carrier that first paragraph of Rule 24 is applicable and controlling in the instant case. Claimants Jeffers and Wagner attended pre-trial conference in their capacity as witnesses in suit defended by the company. Accordingly, they were properly allowed pay for time lost at home station plus legitimate expenses as clearly provided in first paragraph of Rule 24 above quoted.

The carrier maintains that claimants were not summoned to attend company's investigation in which they were not directly involved, nor were they required to report outside of regular bulletined hours. They reported at pre-trial conference at 2:00 P.M. which was within the bulletined hours of their regular assignments. Therefore, the contention of the employes that second paragraph of Rule 24 is applicable and controlling is contrary to the clear language and intent of the rule and is without merit or support.

Carrier submits claimants were furnished free transportation from Bridgeport, Pa., to Philadelphia, Pa., and return on April 12, 1956. Furthermore, there is no provision in Rule 24 of the effective agreement for the payment of travel time as here claimed by the employes. The rule is completely silent with respect to travel time. The carrier submits it is well established that your Board is not empowered to write a rule into an agreement where none exists. Accordingly, carrier maintains that claim for travel time as here presented is without merit and should not be considered by the Board.

Under the facts and circumstances, carrier maintains that claimants Jeffers and Wagner were properly compensated for attending pre-trial conference on April 12, 1956 in accordance with the applicable rules of the effective agreement and claim as here presented is without merit and unjustified and requests that same be denied in its entirety.

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 were given due notice of hearing thereon.

It is contended that the claimants are entitled to be paid for April 12, 1956 under the second paragraph of Rule 24, which applies to employes "When summoned to attend Company's investigation in which they are not involved". The term investigation is well understood in this industry and it is obvious that these claimants were not summoned to attend an investigation but were used as witnesses in connection with a pending court case.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December, 1958.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3066

The majority in denying the instant claim ignores the fact that claimants performed continuous service after their regular working hours and should therefore have been compensated for such service in accordance with Rule 7(a) which prescribes that "For continuous service after regular working hours, employes will be paid time and one-half on the actual minute basis with a minimum of one (1) hour for any such service performed."

/s/ James B. Zink

/s/ R. W. Blake

/s/ Charles E. Goodlin

/s/ T. E. Losey

/s/ Edward W. Wiesner