

Award No. 3713

Docket No. 3681

2-RDG-FT-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Richard F. Mitchell when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 109, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Federated Trades)**

READING COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreements Machinist R. A. Callender, Fireman and Oiler N. P. Yoder, Boilermakers C. M. Minnich and J. Bolognese, were improperly compensated on September 18, 1958, when sent from Harrisburg, Pa., to Philadelphia, Pa., to attend a conference in the Claims' Department.

2. That accordingly the Carrier be ordered to additionally compensate Machinist R. A. Callender nine (9) hours; Fireman and Oiler N. P. Yoder nine (9) hours and Boilermakers C. M. Minnich and J. Bolognese three (3) hours at their respective pro rata rates.

EMPLOYEES' STATEMENT OF FACTS: Machinist R. A. Callender; Fireman and Oiler N. P. Yoder and Boilermakers C. M. Minnich and J. Bolognese, hereinafter referred to as the claimants, are regularly employed at the Rutherford enginehouse, Harrisburg, Pa. of the Reading Company, hereinafter referred to as the carrier.

Boilermakers C. Minnich and J. Bolognese are regularly assigned to the 7:15 A. M. to 3:15 P. M. shift.

Machinist R. Callender and Stationary Fireman N. Yoder are regularly assigned to the 3:15 P. M. to 11:15 P. M. shift.

The claimants were summoned to attend a company investigation by the claims department to determine what they knew about the alleged personal injury suit of Boilermaker Gingrich and that they were not, nor have they been used as witnesses for the carrier.

Boilermakers C. Minnich and J. Bolognese were ordered to leave Harrisburg, Pa., fifteen (15) minutes in advance of their regular bulletined hours.

When attending court as witnesses for the company, employes will be reimbursed for reasonable expenses and paid eight (8) hours each day or part thereof including Sundays and holidays for such court service. When necessary the company will furnish transportation and will be entitled to certificates for witness fees in all cases.

When employes are required to report outside of their regular bulletined hours to act as witnesses for the company in investigations, they shall be paid as per Rule 7."

However, when the rule was finally negotiated into agreement effective January 16, 1940, it was in its present form and it has remained the same through subsequent negotiations with the System Federation which resulted in corrected agreements in 1946 and 1951. Since this rule has been in effect and in accordance with provisions thereof, carrier has paid time lost at home station plus legitimate expenses for employes represented by the shop crafts organization who attended pre-trial conferences in connection with their use as witnesses in suits brought or defended by the Company. Carrier maintains that if the organization desires to change the long practice under Rule 24 that this is a matter for negotiation, and it is not the function of the Adjustment Board to write a new rule and place the parties in a position different from that bargained for.

It should also be noted that in Section 6 Notice served on the carrier on March 18, 1944, System Federation again requested that Rule 24 be amended, proposing the same rule as they had requested on October 19, 1938, quoted above. This proposed rule was also withdrawn during negotiations and the present rule retained.

From its handling of its claim on the property, it is apparent that the organization is contending that a pre-trial conference is an investigation as contemplated by the second paragraph of Rule 24. Carrier does not concur or agree with this contention of the organization. An investigation or hearing and investigation is conducted by company officers who generally supervise the employe involved, and its purpose is to establish facts and determine responsibility in connection with any incident which affects carrier's operations or the employer-employe relationship. As a result of the investigation, responsibility or lack of responsibility for the incident under investigation is determined and necessary corrective action is available to the carrier. A pre-trial conference, on the other hand, is conducted by trial counsel retained by the carrier, who is not an employe of the carrier. At the pre-trial conference, the attorney reviews with his witnesses pertinent data in connection with the case at trial, such as depositions taken, exhibits to be introduced, etc. Carrier maintains that attendance at pre-trial conferences is clearly in connection with employes' use as witnesses under the provisions of the first paragraph of Rule 24.

Under the facts and circumstances, carrier maintains that claimants were properly compensated for attending pre-trial conference on September 18, 1958 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 this 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 of appearance at hearing thereon.

On September 18, 1958 claimants were regularly assigned at Rutherford, Pa., and were requested to attend a pre-trial conference at Reading Terminal, Philadelphia, between the company's trial counsel and various witnesses, including claimants, in connection with a personal injury suit brought against the Railroad by an employe. Claimants attended the conference which lasted from 12 noon until 2:15 P. M. and were paid a total of 13 hours at pro rata rate plus legitimate expenses.

It is the contention of the claimants that they should have been paid under the Second Paragraph of Rule 24, of the Shop Craft Agreement.

The same issue that is involved in this case, under the same Agreement, was decided by this Division in Award No. 3066, we quote with approval from Referee Whiting Award:

"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 22nd day of March 1961.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3713

We consider the Award cited by the majority as authority for denying this claim as erroneous, as evidenced by our dissent to that Award.

James B. Zink
Edward W. Wiesner
R. W. Blake
Charles E. Goodlin
T. E. Losey