

Award No. 4577
Docket No. 4341
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 improperly paid Car Inspector M. Dunford for services rendered on February 23rd, March 24th, 26th and 27th, 1961.

2. That accordingly the Carrier be ordered to pay Car Inspector M. Dunford in the following manner and amounts:

Thursday, Feb. 23rd — 8 hrs, 1½ time @ \$3.891 per hr. \$31.128

Thursday, Feb. 23rd — 8 hrs. str. time @ \$2.594 per hr. \$20.75

A total of \$51.878, less what he had been paid.

Friday, Mar. 24th — 6 hrs. 1½ time @ \$3.891 per hr. \$23.346

Friday, Mar. 24th — 8 hrs. str. time @ \$2.594 per hr. \$20.75

Sunday, Mar. 26th — 11 hrs. 1½ time @ \$3.891 per hr. \$42.80

Less what he had been paid.

Monday, Mar. 27th—19.75 hrs. 1½ time @ \$3.891 per hr. \$76.85

Less what he had been paid.

EMPLOYEES' STATEMENT OF FACTS: M. Dunford, 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 at its South Boston Passenger car yard, South Boston, Mass., on a regular assignment Tuesday to Saturday, 4:00 P. M. to 12:00 Mid., Sunday and Monday as rest days.

On February 22, 1961 the claimant was instructed, by the management, to make himself ready to appear in court in New York City, a distance of 229.5 miles from his home terminal, as a witness for the carrier on the following day.

The claimant departed south station terminal, Boston, Mass., at 8:00 A. M., Feb. 23rd, arrived in New York at 12:20 P. M., appeared before the court

We respectfully submit that Rule 22 makes no provision for payment of time except that actually held at court or investigation on relief days; further, that the sole payment to one held off his assignment on a work day is the earnings of his assignment.

The claim presented by the employees goes beyond these provisions of Rule 22 and into an area not the subject of agreement between the parties.

In a similar question of jurisdiction the Third Division, National Railroad Adjustment Board (Referee McMahon) said in Award No. 8838:

"The work here involved is not exclusively that of the Clerks. Such can only be acquired by negotiation between the parties. This Board has no authority to make any change, by adding to or detracting from the provisions of the rules as agreed to between the parties. The claims are without merit as applied to the provisions of the Agreement and shall be denied."

Similarly in Award 3086 your Board said:

"Our only function is to determine if the agreement has been violated.

"If this practice of requiring physical examinations is unfair or inequitable it should be corrected by negotiation."

We respectfully submit that the subject of this dispute is a negotiable matter not within the jurisdiction of this board to grant.

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

1. The sole payment to which Mr. Dunford is entitled for being held off his regular assignment on February 23 and March 24 is one day's pay at straight time.

2. The sole payment to which Mr. Dunford is entitled for being held at court March 27, an assigned rest day, is eight hours at penalty time.

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

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

5. That the instant claim finds no support either in rule or 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 employees 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 of appearance at hearing thereon.

Claimant is employed by the Carrier as a Car Inspector at its South Boston Passenger Car Yard, regular assignment Tuesday through Saturday, 4:00 P. M. to 12:00 Midnight, Sunday and Monday as rest days.

On Thursday, February 23, 1961, Claimant was held off his regular assignment and sent to New York for a pre-trial conference in connection with litigation involving the Carrier.

On Friday, March 24, 1961, Claimant was again held off his regular assignment and sent to New York for the same purpose.

On Sunday, March 26, one of his relief days, Claimant travelled to New York for an appearance in Court the following day on the same matter.

On Monday, March 27, one of his relief days, Claimant did appear in Court and was held there from 9:00 A. M. to 5:00 P. M.

Claimant is seeking a continuous time payment on each of the above occasions from the time he left home point until his return.

Rule 22 of the controlling agreement has been interpreted by us in a companion docket involving the same Organization and Carrier. (cf. Award No. 4576.)

That which we said there is equally applicable here with reference to the part of this claim for Thursday, February 23, and Friday, March 24. For these days Claimant is entitled to reimbursement for a day's pay equal to what he would have earned on his regular assignment of eight hours.

The claim made for the rest days of Sunday and Monday, brings before us the interpretation of the third paragraph of Rule 22 which was not directly involved in Award No. 4576.

The third paragraph of Rule 22 reads as follows:

"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."

Claimant maintains that the phrase "will be paid for the time so held" as used in this paragraph means all of the time from his departure, to the time of his return to home point, and that therefor he should be compensated at the time and one-half rate from his departure on Sunday, March 26, until his return on Monday, March 27.

Carrier contends that this phrase means only the time that Claimant was held at Court, viz.; 9 A. M. to 5:00 P. M. on Monday, March 27, for which he has already been paid at the time and one-half rate.

It will be noted that this paragraph of the rule makes no allowance for waiting or travelling time. It makes provision for compensation equal to what Claimant would have been paid had he been called to work a shift, or part of a shift on his rest day, when he is called on Carrier's behalf to attend Court.

The compensation called for is for the time held while attending Court, not the time consumed in travelling and waiting to attend Court. The contractual right of Claimant is payment at time and one-half for Monday, March 27 from 9:00 A. M. to 5:00 P. M. for which he has already been paid.

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.