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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 6503  
Docket No. 6346  
2-N&W-CM-'73

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

Parties to Dispute: ( System Federation No. 16, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
(  
( Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That Carman R. M. Lawrence, SR., Rock, West Virginia, Local Chairman of Carmen Organization, employed at Elmore, West Virginia, was unjustly treated and the provisions of the Current Agreement were violated when the Carrier refused to compensate him ten and one-fourth hours ( $10\frac{1}{4}$ ) at the punitive rate for August 24, 1970, eight (8) hours at the pro rata rate and one hour (1) at the punitive rate for August 25, 1970, and eight (8) hours at the punitive rate for August 26, 1970, account attending conference and/or investigation at Roanoke, Virginia, summoned by Management.
2. That the Norfolk and Western Railway be ordered to compensate Carman R. M. Lawrence, Sr., at the straight time rate and the punitive rate for the dates herein named above, with interest of 6% per annum, compounded annually on the anniversary date of claim until paid, account having attended investigation at Roanoke, Virginia.

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 of appearance at hearing thereon.

Claimant was employed as a Carman on the second shift (3:00 P.M. to 11:00 P.M.) with a work week of Tuesday through Saturday with Sunday and Monday as rest days. Claimant was instructed to appear as a witness for Carrier at an investigation of a derailment; the investigation was held 131.6 miles outside of Claimant's seniority district on Monday and Tuesday, August 24 and 25th, 1970. Claimant is asking for  $10\frac{1}{4}$  hours at punitive rate for Monday, 8 hours pro rata and one hour at punitive rate for Tuesday, and 8 hours at punitive rate for Wednesday due to shift change.

Petitioner bases the claim on alleged violations of Rules 6, 12 and 23 of the Agreement. Rule 6 provides for the punitive rate to be applied for work performed on rest days and Rule 12 provides for the punitive rate to be paid for the first shift worked when employees are changed from one shift to another. Rule 23 reads as follows:

"ATTENDING COURT - Rule No. 23

Employees taken away from their regularly assigned duties at the request of the Management to attend Court or to appear as witnesses for the Company will be furnished transportation and will be allowed compensation equal to what would have been earned had such interruption not taken place. Necessary actual expenses will be allowed while away from headquarters. Any fees or mileage accruing will be assigned to the Company."

As we have said in the companion case Award No. 6502 contrary to Carrier's contention, Rule 23 does apply to appearing as a witness for Carrier; the language is clear and unambiguous. Further we find, as we said in the earlier Award, that service performed by Claimant as a witness at the request of Carrier must be construed as work under the Agreement. For these reasons, the provisions of Rules 6 and 12 are applicable to this situation.

Claimant was paid 8 hours pro rata for Tuesday (as well as expenses). The record is silent with respect to Claimant's work and compensation for Wednesday August 26. For these reasons we shall award Claimant 10 $\frac{1}{4}$  hours at punitive rate for Monday, one hour at punitive rate for Tuesday, and on the assumption that he worked his regular second shift on Wednesday 8 hours at punitive rate less his regular pay for that day. Since the Agreement makes no provision for interest, we shall not allow that portion of the Claim.

A W A R D

Eleven and one quarter hours pay at punitive rate; eight hours at half pay; no interest shall be paid.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: E.A. Killen  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of May, 1973.