

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

Parties to Dispute: (System Federation No. 42, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company violated terms of the controlling agreement when they refused to compensate Carmen A. L. Burton, J. C. Bunch, and J. L. Faulkner for an additional two (2) and one-half (1/2) hours each at overtime rate and one-half (1/2) hour at pro rata rate on June 18, 1974.
2. That accordingly, the Seaboard Coast Line Railroad Company be ordered to compensate Carmen A. L. Burton, J. C. Bunch, and J. L. Faulkner two (2) and one-half (1/2) hours at overtime rate and one-half (1/2) hour each at pro rata rate for service rendered on June 18, 1974.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The Claimants' normal shift was 7:00 a.m. to 3:30 p.m. with a lunch period between noon and 12:30 p.m. Carrier directed Claimants to appear in Court on June 18, 1974, in Gainesville, Florida (150 miles from Claimants' regular place of employment), as witnesses for Carrier in civil litigation.

A Carrier Supervisor picked up Claimants at their homes at 4:30 a.m., and after the Court appearance returned them to their work locations. They performed normal duties from 2:15 p.m. to 3:30 p.m.

Carrier paid Claimants for eight (8) hours at their pro-rata rate for the day.

Rule 5(e) specifies time and one-half for services performed in advance of regular working period, but Rule 21 states:

"Employees taken away from their regular assigned duties at the request of Management to attend court or to appear as witnesses for the Railroad will be allowed compensation equal to what would have been earned had such interruption not taken place, and in addition actual expenses either at home station or while away from headquarters, which shall include sleeping car accommodations where required to travel at night. An employee attending court at request of the Management during his layoff day (rest days and Holidays to be counted as layoff days when not assigned to work these days) or while on leave of absence will be paid eight (8) hours at pro rata rate each day or part thereof for such court service.

When necessary the Company will furnish transportation, and will be entitled to certificate for witness fees in all cases."

The Organization urges that Carrier utilized Claimants' "services" for which the men must be compensated pursuant to Rule 5(e). Further, it argues that Rule 21 supports its contention that Claimants were not properly compensated.

We are not unmindful of the concept, as expressed in Award 1438, that when an employer calls upon an employee to perform a service, compensation should be made. But, we are equally mindful of the oft-stated concept that a specific rule must take precedence over a general rule. See Third Division Award 18143.

Thus, if the Agreement contained no Rule 21 - or its equivalent, we would be called upon to determine if Court attendance is encompassed in the term "service." However, we must confine our consideration solely to Rule 21 inasmuch as it deals with the specific factual circumstances here in issue.

The Claimant relies upon Awards 6502 and 6503. The main discussion of those Awards was whether attendance at "investigations" was covered by a "Court" attendance rule, but, in any event, the Awards granted pay for periods in excess of the normal work day. Certain Third Division Awards, however, reached contrary results (see, for example, 18143 and 18410).

We fully concede that the result herein may be harsh, and may afford pay for lesser time than actually devoted to the employer's pursuits. But, the rule is clear. The compensation due is the amount "...equal to what would have been earned had such interruption not taken place..." As we view this record, Claimants would have earned one day's pay had they not been taken away from their regular assigned duties.

We note that the rule provides for overnight expenses. Under the Claimants' theory, overtime pay would continue throughout the entire time away from home, including "sleeping time". We question that the parties intended such a result.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 29th day of March, 1977.