

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)
THE CHESAPEAKE AND OHIO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES.—Is Machinist-Inspector R. P. Corker, Hinton, W. Va., entitled to pay of a call (4 hours at straight rate for 2 hours 40 minutes or less) per the 3rd paragraph of Rule 7, when required to attend Board of Inquiry investigation of Engineer C. C. Burk, charged with flattening tires of engine 1584, detected by Mr. Corker after arrival of the engine at Hinton?

JOINT STATEMENT OF FACTS.—Machinist-Inspector R. P. Corker was regularly assigned to 3rd shift, 11:00 P. M. to 7:00 A. M., at Hinton, W. Va., engine terminal, shops, and yards.

Engine 1584 arrived during his shift, and was inspected by him as part of his regular duties. Mr. Corker detected the tires of this engine had been slid flat, and reported the defect in the regular way.

Board of Inquiry was convened at 8:00 A. M., July 11, 1934, to determine who or what was responsible for the slid flat tires of engine 1584, and Mr. Corker was notified to report to the road foreman of engines at 8:00 A. M. (one hour after his regular quitting time) as Board of Inquiry witness. The investigation was completed about 9:00 A. M.

POSITION OF EMPLOYEES.—As Machinist R. P. Corker was required to render service to the Chesapeake and Ohio Railway Company on his own time necessitating him returning to the office after going home from work to attend an investigation in which he was not in any way involved, as a witness for the railway company, which necessitated him laying aside all of his own personal affairs, and consumed time which he could have used to his own advantage, we feel that he should be compensated for the service rendered, and the same to apply to all other cases.

The part of rules quoted from Shop Crafts' Agreement will show that it is a standard practice to pay shopmen for services rendered, even though they may not actually perform work with the tools:

"RULE 7: * * * Employees called or required to report for work and reporting, will be allowed the minimum of four (4) hours for two (2) hours and forty (40) minutes or less * * *."

UNDERSTANDING ON RULE NO. 7

3rd paragraph.—"This paragraph means that an employe called or required to report for work, and reporting, will be allowed a minimum of four hours for two hours and forty minutes or less from time called * * *."

RULE 10. " * * * *Employees called to report for road service, or wrecking service, and reporting but not used, will be allowed three hours' pay at straight time rate for each call.*"

POSITION OF CARRIER.—Engine Inspector-Machinist R. P. Corker, Hinton, W. Va., engine terminal, assigned on the 3rd shift, 11:00 P. M. to 7:00 A. M., inspected C. & O. Railway engine 1584, morning of July 11, 1934, and reported that the driving wheel tires had been flattened. Mr. Corker came off duty at 7:00 A. M., his regular quitting time, was notified to appear to give the Board of Inquiry information as to the condition of the tires of engine 1584, which he did, and was excused around 9:00 A. M.—about 14 hours before the starting time of his regular shift at 11:00 P. M.

Mr. Corker's presence was necessary to respond to questions, either by the engineer, C. C. Burk, who operated engine 1584 into Hinton, Mr. Burk's repre-

sentative, or by the officials, and was therefore present in not only the interest of the company and the engineer, but there to substantiate his report that the tires of engine 1584 were flattened when he inspected them, the amount flattened, and to give other information concerning the circumstances in connection with the damage.

From examination of Rule 7, page 43, of the Agreement, and Understanding of Rule 7, page 115, it will be observed that Rule 7, 3rd paragraph, and the Understanding of the 3rd paragraph, to which employes' representative refers, provide pay for employes called or required to report specifically "for work."

The practice of calling upon employes to give information to Boards of Inquiry as in this case is as old as the railroad itself, and we have record of paying in only two instances, when a supervisor who was not familiar with past practice allowed pay. Investigations by Boards of Inquiry are held to develop the cause or causes of any detrimental occurrence in which the railroad or its employes are involved, and to decide on corrective measures, by discipline, or change of practice if found faulty, and in general to advance the science of railroading.

There being no rule in the agreement designed to pay for attendance on Board of Inquiry, to grant the employes' request will be tantamount to adding a new rule to our agreement, and therefore not a matter over which your Board has jurisdiction.

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.

The parties to said dispute were given due notice of hearing thereon.

Rule 7 of the existing agreement referred to in the instant case reads as follows:

"For continuous service after regular working hours, employes will be paid time and one-half on the actual minute basis. *For forty minutes or less continuous service after bulletin hours, one hour straight time will be allowed.*

"Employes shall not be required to work more than two hours without being permitted to go to meals. Time taken for meals will not terminate the continuous service period and will be paid for up to thirty (30) minutes.

"Employes called or required to report for work, and reporting, will be allowed a minimum of four (4) hours for two (2) hours and forty (40) minutes or less, and will be required to do only such work as called for or other emergency work which may have developed after they were called, and cannot be performed by the regular force in time to avoid delays to train movement.

"Employes will be allowed time and one-half on minute basis for services performed continuously in advance of the regular working period with a minimum of one hour—the advance period to be not more than one hour.

"Except as otherwise provided for in this rule, all overtime beyond sixteen hours' service in any twenty-four-hour period, computed from starting time of employes' regular shift, shall be paid for at rate of double time."

The parties who negotiated the agreement in effect on this property did not make it plain, either in the rules or interpretation thereof, whether employes should be paid for special service such as is involved in this dispute.

The same parties are now in disagreement over the intent of the rule.

The absence of rules or practices which might clearly show the intent of the parties in agreeing to the rule herein invoked makes this dispute a subject of negotiation.

AWARD

For the reasons stated in the above findings the claim cannot be sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. MINDLING
Secretary

Dated at Chicago, Illinois, this 4th day of June, 1936.

120687—vol. 1—37—8