

Award No. 1159

Docket No. 1066

2-L&N-FT-'46

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Sidney St. F. Thaxter when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 91, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (FEDERATED TRADES)

LOUISVILLE & NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That Car Inspectors R. J. Holtzclaw and B. Humphress are each entitled to be additionally compensated in the amount of \$32.21 for the service which they were assigned to perform from 12:15 A. M., July 13 to 5:40 P. M., July 14, 1944, under the current agreement.

EMPLOYES' STATEMENT OF FACTS: On or about July 7, 1944, a troop train wreck occurred at or near Highcliff, Tennessee. Mr. N. H. Lockney, superintendent of the Knoxville and Atlanta Division deemed an **INVESTIGATION** expedient for the purpose of ascertaining, if possible, the exact cause of the wreck. Accordingly, he set July 13, 1944, as the date on which the **INVESTIGATION** would begin, and the city of Knoxville, Tennessee, as the location in which the **INVESTIGATION** would be held. As scheduled, the **INVESTIGATION** began about 9:00 A. M., July 13 and continued into the 14th.

On July 12, 1944, Car Inspectors Holtzclaw and Humphress were ordered by Messrs. C. J. Hester and Charlue Denham, car foreman and chief clerk to Master Mechanic Feather, respectively, to report for duty to testify as a witness in the **INVESTIGATION** and to proceed to Knoxville on train No. 17 which departed Corbin, Kentucky—their home station—at 12:15 A. M., July 13. They arrived at Knoxville at 4:15 A. M., same date, at which time they were relieved, with instructions to report for the **INVESTIGATION** at 9:00 A. M., July 13. They reported for duty at 9:00 A. M., July 13, as requested, and remained on duty continuously until 6:15 P. M., same date, at which time they were again relieved, with instructions to report for duty at 8:00 A. M., July 14. They reported for duty at 8:00 A. M., July 14, as instructed, and remained on duty continuously until 5:40 P. M., same date, at which time they were relieved at their home station—Corbin, Kentucky—on their return trip. For these services they were compensated as follows:

July 13:

12:15 A. M., to 4:15 A. M., traveling time, 4 hours at overtime rate, \$1.455 per hours-----	\$ 5.82
9:00 A. M. to 6:15 P. M., attending INVESTIGATION , 9 hours and 15 minutes, 8 hours at .97 per hour-----	7.76
1 hour and 15 minutes at time and one-half, \$1.455 per hour -----	1.82

Section (b) of Rule 23 was written for the sole purpose of providing payment to an employee who is not taken from his regular assignment or from his headquarters, but who is only required to report outside of his regular bulletined hours to act as witness. He is not taken away from his headquarters, hence there are no expenses to be paid, and he works his regular assignment and does not, therefore, lose any time therefrom.

The two provisions are entirely separate and apart, applying to different circumstances. An employee is entitled to payment under either one or the other provisions, not both; that is, if he is taken from his regular assigned duties (does not work his regular shift) he is paid what he would have earned on his regular shift; if, in addition, he is taken away from headquarters, he is paid his actual expenses while away. He gets no payment whatever under Section (b).

On the other hand, if he is not taken away from his regular assigned duties or from his headquarters, but appears as a witness and testifies outside of his regular assignment, he is paid as provided in Section (b).

The employees' contention is clearly erroneous in that if Section (b) applied to the circumstances in the instant case, then the employees would not be entitled to nor allowed their expenses, as Section (b) does not provide payment for expenses and the reason it does not is because it was not intended to cover an employee who is taken away from his headquarters. On the other hand Section (a) clearly contemplates that an employee may be taken away from his headquarters and if so it provides for the payment of actual expenses. The carrier has allowed the claimants compensation equal to that which they would have earned on their regular assignment and in addition their expenses while away from headquarters, thus fully compensating them under Section (a) of Rule 23.

Obviously Section (a) applies to claimants in the instant case and they are not due any additional pay.

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.

The parties to said dispute waived right of appearance at hearing thereon.

Neither side to this dispute seems certain as to the proper interpretation of Rules 23 (a) and 23 (b) claimed by one party or the other to be here involved. It was suggested that the claim be remanded without prejudice, apparently in the hope that the parties may reach an adjustment of the immediate dispute and possibly redraft the rule. But the difficulty in interpreting a rule does not justify the Division in ordering a remand. This procedure has ordinarily been followed only to correct a faulty record.

These claimants acted as witnesses for the carrier at an investigation which was held at the instance of the carrier, and were accordingly entitled to be paid in accordance with Rule 23 (b). Their time must be computed from the hour when they left their home station until they returned. There is no other reasonable way. During this period they must be regarded as having been on duty subject to the carrier's orders.

Rule 23 (b) assumes that employees on the duty here involved will be paid at straight time when held on such duty during their regularly assigned hours. The purpose of the rule is to provide for a method of payment for all

other time when they are held on such duty. This payment is to be in accordance with Rule 7 which covers "Overtime and Calls."

In accordance with this interpretation, the schedule of payment set up by the employees in their statement of position is correct.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 30th day of October, 1946.