

Award No. 1633

Docket No. 1533

2-UT-CM-'53

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 121, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

THE UNION TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYEES: a) That under the current agreement Car Inspectors C. J. Murphree and O. R. Pogue were unjustly dealt with when the Carrier declined to compensate them for their required service outside of their bulletined hours January 21, 1952.

b) That accordingly the Carrier be ordered to compensate these aforesaid employes at overtime rate for the service required of them outside of their bulletined hours between 10:00 A. M. and 3:00 P. M. on January 21, 1952.

EMPLOYEES' STATEMENT OF FACTS: Car Inspector C. J. Murphree and O. R. Pogue hereinafter referred to as the claimants, were regularly employed by the carrier in the coach yard and passenger station at Dallas, Texas on the second shift with the assigned hours of 3:00 P. M. to 11:00 P. M. On January 20, 1952, the carrier summoned these claimants as witnesses at an investigation of switchmen to be held on January 21, 1952, at 10:00 A. M. to determine the cause of the damage which occurred to T & P Baggage Car No. 652, T & P Box Car No. 11704, M. P. Box Car No. 88319 and M. P. Baggage Car No. 4223 in switching operation on the Union Terminal Company on December 9, 1951. The claimants reported as instructed and were required to remain at the investigation from 10:00 A. M. to 3:00 P. M. a total of five hours.

The claimants for performing this service as instructed each turned in a service card for pay in the amount of five (5) hours at the time and one-half rate which the carrier declined to pay.

The agreement effective March 1, 1938, as subsequently amended is controlling.

POSITION OF EMPLOYEES: It is submitted on the basis of the foregoing statement of facts that these claimants are subject to be compensated as set forth in the above statement of claim under the aforementioned con-

actual expenses will be allowed when away from home station. The Company will be entitled to their mileage and witness fees."

but nowhere in that rule can be found any language as to employes attending investigations. Even under that rule, however, no payment is allowed for time spent thereunder outside assigned hours, except that straight time payment is made under rule 10 when attending court or coroner's inquest on rest days and holidays.

The claim as made is not supported by the agreement and it should 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 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.

Claimants were car inspectors in the coach yard and passenger station at Dallas, Texas. On January 21, 1952, claimants were called as witnesses at an investigation of switchmen to determine the cause of damage to four cars during switching operations on December 9, 1951. Claimants contend they are entitled to be paid for the time spent at the investigation, it having been held outside their assigned hours. The organization relies upon Rule 2 (f) which provides:

"Employes called or required to report for work and reporting will be allowed a minimum of four (4) hours for two hours and forty minutes or less."

It appears that claimants were called to the investigation as witnesses for the carrier in determining whether or not switchmen were responsible for the damage to the four cars in question. It was a matter of no personal concern to claimants. This distinguishes the case from that in Award 1632 and calls for the opposite result. A sustaining award is required by the reasoning contained in the awards cited in Award 1632. It is also required by Award 1438 of this Division.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of January, 1953.