

Award No. 2252
Docket No. 2114
2-CRI&P-MA-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Machinists)**

CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier improperly compensated Machinist J. W. Griffin, Memphis, Tennessee, for service rendered as a witness for the railroad in a law-suit on his rest days, November 25 and 26, 1953.
2. That accordingly, the Carrier be ordered to compensate claimant Griffin for eight (8) hours at time and one-half rate for such service on each of the above dates.

EMPLOYEES' STATEMENT OF FACTS: Machinist J. W. Griffin, hereinafter referred to as the claimant, entered the service of the carrier on December 5, 1910, and at the time of this claim was employed by the carrier at Memphis, Tennessee. His assigned hours were 7:30 A. M. to 4:00 P. M., with Wednesdays and Thursdays as his rest days.

The claimant was requested by the carrier to act as a carrier witness in a law-suit to be held in Amarillo, Texas beginning on November 23, 1953. In compliance with this request, the claimant left Memphis, Tennessee, by train at 7:30 P. M. November 21, 1953, after having worked that date at his regular assignment. He arrived at Amarillo, Texas at 4:30 P. M. November 22. The claimant reported to the carrier's attorney on his arrival and reported to the court on the morning of November 23 and remained in court until dismissed in the afternoon of November 25. He left Amarillo, Texas at 9:30 P. M. on November 25 and arrived at Memphis at 6:50 P. M. November 26.

Claimant had been notified to send his time cards and expenses covering the above days while acting as a carrier witness to Mr. McHugh of the claim department at Fort Worth, Texas. Claimant submitted same to Mr. McHugh as requested and turned in on his regular time cards eight (8) hours at pro rata rate for November 22, 23 and 24 and eight (8) hours at time and one-half rate for such service on his rest days, Wednesday and Thursday, November 25 and 26. The time cards were approved and submitted to Mr. Needham, auditor of disbursements, in Chicago. Mr. Needham then declined to allow

does not provide for penalty pay for attending court on rest days and holidays. Rule 21 reads:

“RULE 21. ATTENDING COURT OR CORONER’S INQUEST. When attending court or coroner’s inquest as witnesses for the company, employes will be reimbursed for reasonable expense and paid eight (8) hours each day or part thereof, including rest days and holidays, for such court or inquest service. The company will furnish necessary transportation and the company will be entitled to certificates for witness fees or mileage in all cases.”

The history of current Rule 21 has been developed at length to prove that the present disputed rule does not, either in language or intent, provide for payment of penalty rate for attending court on rest days or holidays.

Thus, to sustain the employes’ contention in the instant case would be equivalent to writing into a negotiated rule something not now contained therein. The employes are hereby endeavoring to secure through an affirmative award of your Board in this dispute, a revision of a rule which they did not, as above indicated, secure through the process of negotiation under the Railway Labor Act.

The claimant in this case was allowed 5 days pay at pro-rata rate for attending court in full compliance with Rule 21, quoted above. The employes contend that payment for November 25 and 26, 1953, claimant’s rest days, should have been at penalty instead of pro-rata rate.

The carrier has never allowed penalty rate under the current agreement of October 16, 1948 nor under rules of the prior agreements of 1941 and 1935 to shop craft employes who attend court on rest days or holidays as witnesses for the carrier. The employes can produce no evidence to the contrary. That the payment of pro-rata rate is proper under Rule 21 for all days including rest days is clearly demonstrated by the history of this rule detailed above.

What the claimant did on the 5 days of which he attended court was neither service nor work as those terms are used in Rules 6, 7, and 53. Rule 21 is a rule standing by itself and is a specific rule. Even if attending court could be classified as work or service under the agreement, Rule 21 is an exception to Rules 6 and 7 by the language contained in Rules 6 and 7:

“. . . except as may be provided in rules hereinafter set out.”

For all of these reasons, the carrier has declined claim of the employes in the instant dispute and requests your Board to do likewise.

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.

Claimant is a machinist at Memphis, Tennessee, assigned 7:30 A. M. to 4:00 P. M., Friday through Tuesday. He worked his assignment on November 21, 1953, and left for Amarillo, Texas, at 4:30 P. M., to appear in court as witness at the request of the carrier. He arrived the next day at 4:30 P. M. and reported to carrier’s attorney. He reported to the court on November 23 and remained until dismissed in the afternoon of November 25. He left Amarillo at 9:30 P. M. of that day and arrived at Memphis at 6:30 P. M. on

November 26. Claimant was paid eight (8) hours for November 22 through November 26. He claims time and one-half rate for Wednesday and Thursday, November 25 and 26, his rest days. The dispute involves the meaning of Rule 21, current agreement, which provides:

“When attending court or coroner’s inquest as witnesses for the company, employes will be reimbursed for reasonable expense and paid eight (8) hours each day or part thereof, including rest days and holidays, for such court or inquest service. The company will furnish necessary transportation and the company will be entitled to certificates for witness fees or mileage in all cases.”

It is the contention of the claimant that he is entitled to time and one-half for attending court on his rest days. The question must be determined from the plain meaning of Rule 21. See our discussion of this point in Award No. 2251.

Rule 21 provides that an employe will be paid eight (8) hours “each day or part thereof, including rest days and holidays, for such court or inquest service.” The eight (8) hours for each day refers to a calendar day. It is not even contended that an employe is entitled to more than eight (8) hours’ pay for attending court in excess of eight (8) hours or during unassigned hours on one of his assigned workdays. It is clearly the intent of the rule than an employe shall receive the same pay for each day he attends court whether it be a workday, holiday or rest day, or any part thereof. The rule contemplates the pro rata rate of pay for such eight (8) hours. We may not properly look to other parts of the agreement in determining the meaning of a rule dealing with a special subject when the rule itself does not authorize us to do so. The payment of eight (8) hours at the pro rata rate for any day an employe attends court or an inquest, including rest days and holidays is contemplated by the rule. Time and one-half is no more contemplated for rest days and holidays than it is for time outside of assigned hours on regular assigned workdays. We feel obliged to adhere to the plain intent of the rule and leave any misconceptions as to its meaning for the consideration of those who negotiate changes therein.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September, 1956.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2252

The majority’s interpretation of Rule 21 is altogether too narrow. There is no basis for the majority’s contention that the eight hours referred to in Rule 21 refers to a calendar day, nor is there any basis for the majority’s contention that “The rule contemplates the pro rata rate of pay for such eight (8) hours.”

There is no rate set forth in Rule 21. The spirit and intent of the parties to the agreement was to apply the straight time rate for straight time hours and the overtime rate for overtime hours. Under the proper construction of the agreement rules the claimant should not be penalized because the carrier required him to render service for the carrier on his rest days. The claimant’s service cannot be regarded as purely voluntary on his part; he performed the instant service at the direction of the carrier. The claimant, in performing service on his rest days, rightfully expected to be compensated at the rate specified for service performed on rest days, namely time and

one-half. The agreed value for service performed on rest days is time and one-half and the claimant should have been compensated at that rate as claimed.

Edward W. Wiesner

R. W. Blake

C. E. Goodlin

T. E. Losey

George Wright