Award No. 5010
Docket No. 4946
2-L&N-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Ben Harwood when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1 – That Car Inspectors H. R. Hutchinson and Eli Worrell, Decoursey, Kentucky, were improperly compensated while traveling to and from Atlanta, Georgia, and appearing as witnesses in an investigation held thereat on June 22, 1964, and

2 – Accordingly, the Louisville and Nashville Railroad Company should be ordered to additionally compensate them for 16 hours, each at the rate of time and one-half and 9 hours and 50 minutes, each, at double time rate.

EMPLOYES' STATEMENT OF FACTS: During their regular tour of duty on Saturday, June 20, 1964, Car Inspectors H. R. Hutchinson and Eli Worrell, Decoursey, Ky., were notified to report to the car foreman's office. Upon arrival, they found both Mr. J. O. Carr, car foreman and Mr. E. O. Rollings, master mechanic, present. After confirming the fact that Messrs. Hutchinson and Worrell worked Train No. 43, which departed from Decoursey at 5:48 P. M. on June 10th, Mr. Rollings instructed them to report to Mr. E. H. Civils, superintendent, Atlanta, Ga., on June 22nd, to act as witnesses in an investigation being held in connection with a wreck at Kennesaw, Ga., on June 11, 1964 involving that train and Train No. 8, both of which were freight trains. He gave them detailed instructions, both verbal and written, as to what trains to ride, who to contact upon arrival in Atlanta, information relative to Pullman reservations, etc. Also attached to Mr. Rollings' instructions was a note to him from Clerk Waters relative to the investigation.

In accordance with Master Mechanic Rollings' instructions, Messrs. Hutchinson and Worrell, hereinafter referred to as the claimants, whose regular assignments were Saturday through Wednesday, 3 P. M. to 11 P. M., reported for work on their assignments at 3 P. M., Sunday, June 21st, and at 6:45 P. M., departed for Atlanta on Train No. 5, "The Hummingbird".

The claim was then appealed to your board.

POSITION OF CARRIER: Carrier's statement of facts shows there is no basis for the claim. Continuous service applies to continuous work. The time spent by the employes in the office of the carrier at Atlanta was not work. See Second Division Award 3484, Referee James P. Carey, Jr., wherein it was said.

> "We think the better reasoning, expressed in Award No. 2251, is that attendance at an investigation outside bulletined hours does not constitute work within the meaning of Rule 4(d) of the instant Agreement. It may be that in some circumstances inconvenience might be imposed on employes without adequate compensation therefor, but such possibility does not afford a proper basis for this Board to attempt to attach a meaning to a rule which is contrary to its plain terms."

En route to Atlanta and on their return to DeCoursey, employes traveled in Pullmans and this was resting time, not waiting time. Each claimant was paid what he would have earned on the job and expenses as required by Rule 24(a). They suffered no loss of earnings, and that is the purpose of Rule 24(a). Suppose claimants had been needed for several days. Would it have been continuous time until they returned? NO!

The claimants departed at 6:45 P. M. by Pullman and arrived in Atlanta at 9:50 A. M. The claim calls for 8 hours at time and one-half between 11:00 P. M., June 21, and 7:00 A. M., June 22, while they were sleeping in Pullman. This was not work. Even in wreck service, it is not work.

The claim also calls for time and one-half for 11:00 P. M. to 7:00 A. M., June 23, which again is sleeping time on the return trip, and one hour and 50 minutes at double time for checking in with the car foreman. Sleeping or rest time is not work and is not paid for as such and, therefore, the time claimed on June 22 from 7:00 A. M. to 3:00 P. M. is not double time.

Decisions in the following Second Division Awards, in addition to what has been said heretofore, show there is no merit to the claim: 912, 3066, 3484, 3492, 3638, 3713, and 3955.

There are, of course, many other awards of the board which support carrier's decision, but the above will serve to show the principle laid down by the board under similar circumstances.

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.

Parties to said dispute waived right of appearance at hearing thereon.

The facts in this dispute are in nowise different than those dealt with in Award 1159 and accordingly must be governed by the same rules of the controlling Agreement of September 1, 1943, as subsequently amended. (It should be noted, however, that Rule 23(b) is now 24(b) in the Agreement revised to February 1, 1952.)

As held by this Division in said Award 1159, the rule (now numbered 24(b)) assumes that employes on the type of duty here involved, to wit: acting as witnesses for the carrier **in an investigation** which incidentally was held at the instance of the Carrier, are to be paid at straight time when held on such duty during their regularly assigned hours and for all other time they are held they should be paid in accordance with Rule 7. (Emphasis ours.)

Accordingly, the claim of the employes concerned should be allowed.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 21st day of December, 1966.

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