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orm 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 6502
SECOND DIVISION Docket No. 6345
2-N&W-CM-'73

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (System Federation No. 16, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(Norfolk and Western Railway Company

Dispute: Claim of Employes:

1. That Helper Carman E. J. Clark, Princeton, West Virginia, employed at Elmore, West Virginia, was unjustly treated and the provisions of the Current Agreement were violated when the Carrier refused to compensate him eight (8) hours at the pro rata rate and forty-five (45) minutes at the punitive rate for August 24, 1970 and eight and one-half (8½) hours at the punitive rate for August 25, 1970, account attending conference or investigation at Roanoke, Virginia, when summoned by Management.

2. That the Norfolk and Western Railway be ordered to compensate Helper Carman E. J. Clark at the pro rata rate and the punitive rate for the dates herein named above, with interest of 6% per annum, compounded annually on the anniversary date of claim until paid, account having attended investigation at Roanoke, Virginia.

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.

Claimant was employed at Elmore, West Virginia, as a Carman Helper, working the first shift (7:00 A.M. to 3:00 P.M.) Thursday through Monday with rest days of Tuesday and Wednesday. Claimant was instructed to appear as a witness for Carrier at an investigation of a derailment; the investigation was held in Roanoke, Virginia, 118 miles from Claimant's base, on August 24 and 25, 1970 (Monday and Tuesday). Claimant is asking for eight hours and forty-five minutes pay for August 24 and eight and one-half hours pay for August 25, 1970. Claimant was paid eight

pro rata for August 24, 1970 as well as mileage and expenses; the remaining 45 minutes for August 24 as well as the pay for August 25th is claimed at a time and one-half rate.

Petitioner bases the claim on Rules 6, 12 and 23 of the Agreement. Rule 6 dealing with overtime provides inter alia in (b): "Work performed on rest days and the following legal holidays....shall be paid for at the rate of time and one-half." Rule 23 reads as follows:

"ATTENDING COURT - Rule No. 23

Employes taken away from their regularly assigned duties at the request of the Management to attend Court or to appear as witnesses for the Company will be furnished transportation and will be allowed compensation equal to what would have been earned had such interruption not taken place. Necessary actual expenses will be allowed while away from headquarters. Any fees or mileage accruing will be assigned to the Company"

Carrier indicates that this is a case of first impression under the agreement and argues that Rule 23 is a rule providing specifically for compensation for court attendance and not for investigations; it is further argued that the inclusion of investigations is a matter for negotiations. Carrier further alleges that attending an investigation is not "work" in the accepted sense in this industry and hence Rules 6 and 12 do not apply.

The Organization urges that Rule 23 is applicable to this situation in that it provides for employees who "appear as witnesses for the company" as well as for Court attendance. Petitioner further contends that Claimant by appearing as a witness performed service at the direction of Carrier and is entitled to be paid at the rate provided in Rule 6.

The Carrier has submitted a number of Awards in support of its position. In Award 55 we find that the rules differed substantially from those in this case. Awards 3343 and 3638 may be distinguished in that in those cases the Organization attempted to negotiate a special rule covering compensation for attending investigations. In Awards 1632 and 5376 the issue at the investigation was a matter of personal concern to Claimants - they were parties in interest. In Awards 2132, 2251, 3230 and 3484 the Board held that attendance at an investigation does not constitute work within the meaning of the Agreement. Petitioner cited Awards 1438, 1633 and 1062 which hold to the contrary. Award 6464, which supports Carrier's position, we believe to be in error.

In Award 3462 the Board stated: "... the Carrier took claimant's time for its own use and benefit and in the furtherance of its own business and that, under such circumstances, it mattered not whether claimant worked or only stood and waited, he was entitled to pay..." We share that view; the service performed by Claimant as a witness at the investigation at the request of Carrier must be construed as work under the Agreement.

We do not agree with Carrier's interpretation of Rule 23. The language appears to be unambiguous and relates to both Court appearances and appearing as a witness for Carrier (See 3rd Division Award 18038). Furthermore we do not see any basis for Carrier's payment of expenses and one day's pay to Claimant unless it was in an attempt to conform to Rule 23 and "make claimant whole".

Petitioner asks for interest in addition to the compensation indicated first above. We do not find support in the Rules for any payment of interest; we have barred such claims many times and find no reason in this case to change our thinking.

A W A R D

Claim sustained to the extent of nine and one-quarter hours pay at time and one-half; no interest shall be paid.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ttest: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of May, 1973.