

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: { System Federation No. 121, Railway Employees'
Department, A. F. of L. - C. I. O.
(Carmen)
{ Texas and Pacific Railway Company

Dispute: Claim of Employees:

1. That Car Inspectors B. Y. Brown, J. W. Vance and W. H. Hopper, were improperly compensated while appearing as witnesses for Carrier on February 11, 1974.
2. And accordingly; the Texas and Pacific Railway Company should be ordered to additionally compensate them for 3 3/4 hours each at pro rata rate to adjust from straight time rate to time and one-half rate for seven (7) hours which they were compensated for as witnesses for Carrier.

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.

On February 11, 1974, the Claimants, Carmen B. Y. Brown, J. W. Vance and W. H. Hopper under instructions from Superintendent Mr. C. E. Dettmen, reported to a formal investigation at 10:00 A.M., Monday, February 11, 1974. The three Claimants were called by the Carrier to testify at the investigation on behalf of the Carrier. The Carmen's Organization did not request the presence of the three Claimants as witnesses, and called only one witness, the accused. The Claimants put in for seven hours pay at the overtime rate for this date. A dispute arose and the Claimants changed their cards to the straight time rate so their cards would not be held up, and the instant claim is for the difference of straight time and time and one-half.

The Organization contends that Rule 3(a) and Rule 3(d) supports their entitlement for pay at the time and one-half rate.

The Carrier contends that neither Rule 3(a) nor Rule 3(d) supports the Organization's contention. Indeed that Rule 3 does not support claim for compensation at any rate. The Carrier contends that if there has been a practice of compensating witnesses for after-hours attendance at investigations even at the straight time rate, this practice is purely local and does not establish a binding precedent. The Carrier has ordered this local practice of compensating witnesses for after-hours attendance of investigations at the straight time rate stopped (Carrier's Submission p. 11, Carrier's Rebuttal p. 2).

Rule 3(a) states:

"All work performed outside of bulletined hours will be paid for at the rate of time and one-half until relieved except as may be provided in rules hereinafter set out."
(emphasis added)

We find that the service performed by the Claimants as witnesses at the investigation for the Carrier is "work" within the meaning of Agreement Rule 3(a). Certainly the Carrier had the right to require the Claimants to appear at the investigation. And, the Claimants clearly had the obligation to appear or be subject to charges of insubordination for failure to follow the instructions of Superintendent Dettmen. The Claimants were not themselves charged with any violation in the matter being investigated. The Claimants were called in the instant case, during a seven hour period of the day which but for Carrier's instructions would have been their rest, relaxation or personal time, solely at the behest and for the benefit of the Carrier. We can find no contractual limitation on the word "work" as found in Rule 3(a), no reference is made to the Classification of Work Rules of the signatory crafts to the Agreement, and we are not empowered to rewrite the Agreement. Thus we find that the serving as witnesses at an investigation after work hours is "work" within the meaning of Rule 3(a).

The Claimants were entitled to be paid at the time and a half rate for the time spent at the investigation until relieved by the Carrier. In the Carrier's Submission p. 1 the assertion is made that the Claimants were paid for the waiting period from 7:30 A.M. when their regular shift ended until the hearing began at 10:00 A.M. The Organization disagrees with this contention asserting that the Claimants did not claim time prior to 10:00 A.M., and that the transcript of the investigation shows it started at 10:00 A.M. and was concluded at 5:15 P.M. The transcript is not before this Board and we thus remand this matter to the property to determine the time spent at the investigation by the Claimants. They are entitled to the difference between the straight time rate paid them and the time and one-half rate that should have been paid them for the time spent at the investigation.

A W A R D

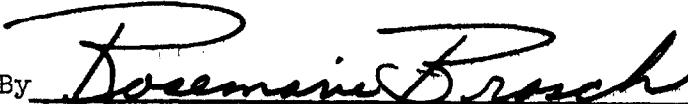
Claim sustained as set out in Findings.

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Award No. 7093
Docket No. 6919
2-T&P-CM-'76

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of July, 1976.