

The Second Division consisted of the regular members and in addition Referee Walter C. Wallace when award was rendered.

Parties to Dispute: (System Federation No. 4, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Firemen & Oilers)
(
(Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That under the current agreement Laborer E. M. Decker was arbitrarily and unjustly denied compensation when required to appear as a company witness for hearing held on Tuesday, October 26, 1976.
2. That accordingly the Carrier be ordered to compensate Laborer Decker four (4) hours at the pro rata rate for attending hearing held on October 26, 1976 which was outside his regular tour of duty.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 claimant is employed in Carrier's South Cumberland Shops as a laborer on the third shift with rest days on Friday and Saturday. On October 22, 1976 claimant received a letter advising him to attend a hearing on October 26, 1976 to determine his responsibility in connection with derailment that occurred on October 22, 1976. The hearing was held on schedule at a time outside claimant's normal duty hours and claimant testified as to what he saw, namely, he watched the locomotive approach the turntable and then fail to stop and went off the table at the opposite end. Claimant's sole involvement was that of a witness and in no sense did he participate in the derailment nor was he guilty of a rule violation or any misconduct. When the results of the hearing were made known, claimant was not advised of the results. Moreover, none of the other witnesses indicated that claimant was responsible or connected with the derailment in any way except as a witness.

Under all the circumstances here, claimant was not charged with a rule violation nor was there any finding that he was implicated in any way except as a witness. The original notice sought to determine Claimant's responsibility, but nothing more was developed beyond that notice. If there was some evidence indicating claimant was involved or responsible for the occurrence and was later cleared of such responsibility, we might have a different view here. Every time a man is absolved from responsibility it does not mean he is automatically converted into a carrier witness. In this case, however, we do not find a shred of evidence that formed a basis for the belief he was responsible for the derailment. Mere notice of the type sent here does not serve to deny him compensation as a witness. He attended the hearing and, in effect, gave testimony as a carrier witness and he should be compensated under Rule 42.

The amount of such compensation is questioned before this Board but we do not find that argument was made on the property. Under the well established rules of this Board we may not consider such arguments for the first time. Therefore, in the absence of contrary evidence we must authorize payment for four (4) hours compensation at pro rata rate.

A W A R D

Claim sustained.

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 23rd day of June, 1978.