

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

FLORIDA EAST COAST RAILWAY

STATEMENT OF CLAIM: "Claim of Section Foreman Howell Peavy that he be paid at pro rata rate in conformity with Schedule Rule 22 for time traveling and waiting in connection with attending investigations called by the Management, held on April 16th and 23rd, 1939."

EMPLOYEES' STATEMENT OF FACTS: "Under date of April 18th, 1939, Section Foreman Howell Peavy received the following instructions:

'FLORIDA EAST COAST RAILWAY

New Smyrna Beach, Fla.
April 18, 1939.
1-27-P

MAILGRAM:

Mr. Howell Peavy,
Section Foreman.

Referring to collision of two motor cars in the vicinity Mile Post 187, Okeechobee Branch, yesterday morning.

Investigation will be conducted in my office 10:00 A. M. Sunday, April 16th, to determine responsibility of this serious violation. Arrange to be present and have with you all members of your gang who were riding car with you at the time of the accident.

I am attaching pass for you and ten (10) men from South Bay to New Smyrna Beach and return.

J. E. Lucas,
Roadmaster.'

copy—Mr. Humphries.

"Reaching New Smyrna Beach for the investigation on April 16th, it developed that Mr. O. L. Beydler, Supervisor of Bridge and Buildings, who likewise was involved in the motor-car accident referred to in Mr. Lucas' letter, was unable to be present, and so it was decided to postpone the investigation until April 23rd, when Mr. Beydler could be in attendance. This made it necessary for Foreman Peavy and his men to make two trips from their headquarters at South Bay to New Smyrna Beach.

"Under date of April 28th, Foreman Peavy wired his roadmaster as follows:

Mr. J. E. Lucas, R. M.,
Mr. F. W. Humphries, Supvr.

'South Bay, Fla.
April 28, 1939

Please advise how to show traveling time to and from investigation for myself and laborers.

H. Peavy, S. F.'

the attendance of other employees at the expense of the Railway were occasioned by Foreman Peavy's action, and there is no obligation under Rule 22 for the Railway to pay travel time to employees attending an investigation in connection with matters that require disciplinary action against the employees. Rule 22 must be considered in such circumstances jointly with Paragraph (d) of Rule 18, which rule provides that if the charge against an employee is not sustained by the investigation, the employee shall be paid for any time lost. The charge against Foreman Peavy was sustained by the investigation, and although he did not lose any time in attending the investigation, both sessions of which were held on Sunday, if he had lost time he would not have been compensated therefor, as the charge against him was proved by the investigation. It follows, therefore, that he is not entitled to travel time under Rule 22 for time spent in traveling to and from an investigation which proved him to be responsible for a certain irregularity. The current agreement with the Brotherhood of Maintenance of Way Employees has been effective since April 12, 1932, and during the time it has been in existence numerous investigations have been held with employees within the scope of that agreement which have required the employees to travel, and no employee has been compensated for such travel time if the investigation which he attended was for the purpose of investigating a charge against him and the charge was sustained by the investigation. Employees ordered to attend investigations as witnesses for the Railway have been compensated for time lost and travel time, and employees attending investigations of matters in which they are involved have been compensated for time lost and travel time if the investigation developed that there was no responsibility on their part in connection with the matter under investigation and no disciplinary action was taken against them. The instant case is the first claim that has ever been presented by the Brotherhood for travel time in favor of an employee attending an investigation which sustained the charge against the employee and made him the subject of disciplinary action, and it is evident that the Brotherhood is seeking an amplification of Rule 22 that was not contemplated when the agreement was negotiated, and which would be inconsistent with the provisions of Rule 18 (d). It is, therefore, the position of the Railway that the claim is not supported by the agreement and should be denied."

OPINION OF BOARD: In view of the circumstances in this case the Board sees no reason to change the manner in which the agreement was applied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employee involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That no violation is shown.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of January, 1940.