

Award No. 1833
Docket No. SG-1872

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
FLORIDA EAST COAST RAILWAY COMPANY

STATEMENT OF CLAIM: Claim that C. F. Turner, signal maintainer, be reimbursed in the amount of \$1.73 representing wage deduction from his regular monthly salary made by the carrier for time he was held from his usual duties on instructions of proper officer to testify in an investigation being conducted by the carrier in an attempt to place the responsibility for a motor car accident.

EMPLOYEES' STATEMENT OF FACTS: C. F. Turner, signal maintainer, was directed to be present at an investigation held on May 17, 1941, to determine responsibility for head-on collision of two motor cars and was present on that date. Time for attending this investigation, which was held during regular working hour, was deducted by the carrier.

Mr. Turner is assigned to a monthly rated position and is not paid for overtime worked in excess of eight hours per day.

Mr. Turner did not lay off of his own accord, his assignment was not abolished, nor was he displaced.

POSITION OF EMPLOYEES: Mr. Turner was directed to be present at an investigation to determine responsibility for head-on collision of motor cars. See Brotherhood's Exhibit No. 1.

Rule 2 of the current agreement effective January 1, 1938, reading:

"Eight (8) consecutive hours, exclusive of meal period, except as otherwise provided in these rules, shall constitute a day's work."

provides a basic eight-hour day.

Rule 31 (b), reading:

"Those parts of Rules 2, 3, 6, 7, 8, 12, 13, 14, 15, and 19 relating to hourly rates, overtime payments, meal period payments, or travel time wages, are not applicable to monthly rated employees, whose monthly rates represent full compensation for all services performed. No overtime will be allowed for time worked in excess of eight (8) hours per day, and no time is to be deducted unless the employee lays off of his own accord, his assignment is abolished, or he is displaced under these rules."

modifies Rule 2 to the extent that overtime will not be allowed for time worked in excess of eight hours per day and that no time is to be deducted unless the employee lays off of his own accord, his assignment is abolished, or he is displaced under these rules.

charge was sustained, therefore, as contemplated by Rule 26 (d) he is not entitled to receive pay for attending the investigation which established his responsibility for the accident. That part of Rule 31, referred to by Mr. Turner, reading:

“ . . . no time is to be deducted unless the employe lays off of his own accord, his assignment is abolished or he is displaced under these rules.”

was not written to cover situations such as the one involved in this dispute but was designed only to provide compensation for the monthly rated employe who devotes full time to his job and whose period of service is not interrupted through his own acts. There is no more logic in Mr. Turner's argument, under Rule 31, that he should be allowed pay for time he was absent from his regular assignment attending an investigation of an accident for which he was responsible, than there would be in a contention that he should be allowed regular wages for time absent from work on account of injuries sustained in an accident on the highway or city streets, occurring through no fault of his own.

3. It can be easily understood that in the normal course of railroad operations irregularities will occur, and rules will be violated, which must be investigated in accordance with the rules of the various working agreements, and that discipline frequently must be administered when the facts and responsibility are determined by such investigations. In such circumstances wages are not allowed employes whose acts require such investigations to be held if the charges against them are sustained, and Mr. Turner was accorded treatment no different from that given all other employes under the Signalmen's Agreement in similar circumstances. On the other hand, employes ordered to attend investigations as witnesses for the Railway are compensated for time lost and travel time, and employes attending investigation of matters in which they are involved are paid for time lost and travel time if the investigation establishes there was no responsibility on their part in connection with the matter under investigation, and that no disciplinary action should be taken against them. In the present case Mr. Turner was responsible for the accident and, in the opinion of the carrier, is not entitled to wages lost while the investigation was being conducted.

4. The Third Division, National Railroad Adjustment Board, has recognized that an employe involved in, or responsible for, an irregularity requiring a hearing, or investigation, is not entitled to pay for his attendance at such investigation and, bearing upon that point, the following is quoted from the Opinion of Board in Award No. 588:

“There is a sharp conflict in decisions concerning payment of employes for time consumed attending investigations, the majority holding in substance that it is not ‘work’ in the sense used in the rules, so as to bring into play the Call Rule or other rules governing work. There may be some warrant for this view in cases such as where an employe is required to attend an investigation involving fault of his own, or where he may be called upon for rules or physical examination, in which matter he has a mutual interest with the carrier.”

The present dispute deals directly with an employe attending an investigation “ . . . involving fault of his own . . . ”. It is the further position of the carrier, therefore, that the claim should be denied for want of merit and on precedent of the Board's own findings.

OPINION OF BOARD: C. F. Turner, a signal maintainer on the lines of the Florida East Coast Railway, Carrier involved here, with home station at Titusville, Fla., employed at a regular salary of \$195.20 per month with no provision for pay for overtime, Sunday or holiday service, was, on May 13, 1941, directed by the Superintendent of Telegraph and Signals to attend an investigation to be held in the Superintendent's office on May 17, 1941, at 9 A. M.

The investigation was for the purpose of determining the cause of a collision of two track motor cars. One of the motor cars was operated by Turner and the other by Track Section Foreman Eller.

The direction to attend the investigation was as follows:

"In order to determine the responsibility for the head-on collision of motor cars S-135 and R-567 May 9, 1941, an investigation will be held in the Superintendent's office, New Smyrna Beach, 9 A. M. Saturday, May 17, 1941.

Please arrange to be present with witnesses and representative of your choice."

Turner attended the investigation and was away from his station for two hours.

On May 17, 1941, following he was notified that the accident was attributed solely to his carelessness and as discipline 30 demerits were entered on his service record. He accepted the finding and the discipline.

Following this the Carrier deducted from his pay \$1.73 for two hours' loss of time from his position as signal maintainer. This the Claimant says the Carrier had no right to do.

For such aid as may be derived from it in the determination of this controversy, we quote from Agreement between the parties Rule 26 (a) and (d) as follows:

"(a) An employe who has been in service more than thirty (30) days shall not be disciplined or dismissed without investigation, and, if he so elects, he may be represented by an employe of his choice. He may, however, be held out of service pending such investigation. The investigation shall be held within ten (10) days of the date when charged with the offense, or held from service. A decision will be rendered within ten (10) days after completion of the investigation."

"(d) If the charge against the employe is not sustained, it shall be stricken from the record. If by reason of such unsustained charge, the employe has been removed from position held, reinstatement will be made and payment allowed for the assigned working hours actually lost while out of service of the Railway, at not less than the rate of pay of position formerly held, or for the difference in rate of pay earned in or out of the service."

It is clear from the rule that, pending the investigation of Turner's conduct, the Carrier had the right to hold him out of service. Was he held out of service pending investigation within the meaning of the rule? Clearly he was not, for the full time that he could have been held out, but may it reasonably be said that because the Carrier chose not to exercise its full privilege of keeping Turner out of service for many days, but only held him out for two hours that it violated its obligation under the rules, and more especially when such action operated to the advantage rather than the disadvantage of Turner? Turner was, as a result of the investigation, found to have been responsible for the collision and was accordingly disciplined. If he had been taken out of service for a longer period, he would, under the circumstances, have lost the pay for such longer period.

As pointed out in Award 1010 of this Division, in these matters it was not the design of the Railway Labor Act that proceedings before the several Divisions of the Adjustment Board should be technical. In this view, if the Carrier had the right to hold Turner out of service for the entire period of many days, it certainly had the right to hold him out for two hours. This does not conflict with the opinion in Award 1445 of this Division. There the employe was exonerated and, of course, was entitled to his compensation whether held out legally or illegally.

The contention that Turner was not, in fact, held out of service is without merit.

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 employe involved in this dispute are respectively carrier and employe 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 the claim has not been sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of May, 1942.