Award No. 2032
Docket No. SG-2124

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Elwyn R. Shaw, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of E. E. Hughes for two hours pay at the rate of time and one-half rate (4:00 P. M. to 6:00 P. M.) February 7, 1941, for service performed account of being required by the management to attend investigation in connection with derailment on February 7, 1941.

JOINT STATEMENT OF FACTS: E. E. Hughes, first trick signal maintainer at J. N. Cabin, Richmond, Virginia, with regular assigned daily working hours (Sunday excepted) from 7:00 A. M. to 3:30 P. M., including thirty minutes for meal period, was instructed by the Carrier to attend investigation held at Richmond after his regular assigned working hours on February 7, 1941, in connection with crossover being run through in the territory under his care. The investigation began at 4:00 P. M. and was completed at 6:00 P. M.

Mr. Hughes was not involved in the derailment which was under investigation. There was no charge that he was in any way at fault. He turned in time card for two hours at the overtime rate which he received in his pay check for the period covering the first half of February, however, the carrier deducted it from Hughes' pay check for the period covering the last half of May 1941.

POSITION OF EMPLOYES: The organization contends that Hughes should be paid two hours at the time and one-half rate for his services performed while attending the investigation at order of the carrier on February 7, 1941, and bases its contention on the rules of the current agreement between the parties effective September 1, 1940, with particular reference to Rules 7, 12 (a), 24 (a) and 30, which read as follows:

> "Rule 7. Eight consecutive hours, exclusive of meal period, except as otherwise provided in Rules 8, 12, 20, 24, 25, and 30, shall constitute a day's work."
>
> "Rule 12. (a) Where one or two shifts are employed, an assignment of eight hours, including allowance of twenty minutes for lunch, may be made, or a meal period of not less than thirty minutes nor more than one hour may be assigned, agreeable to employes affected if consistent with the requirements of the service."
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> "Rule 24 (a). **Employes released from duty and notified or called to perform service outside of and not continuous with regular working hours, will be paid a minimum of three straight time hours for two hours work or less.** If held on duty more than two hours, they will be paid at time and one-half rate, computed on actual minute basis.

It has been clearly shown in this case that the claim is tantamount to the requesting of a new rule based upon an interpretation or construction of the rules of some other company's agreements having no application on the property of this carrier. If a new rule is to be granted, this is a matter of negotiation through the channels prescribed by the Railway Labor Act and is not the function of the National Railroad Adjustment Board.

The principle involved in this case went to the Second Division of the National Railroad Adjustment Board on a parallel case—see Award 55 of that division of your Board. In that case a machinist on the property of this carrier at Hinton, W. Va., was on the third shift and was requested to attend an investigation outside the limits of his regular tour of duty in which an engineer was charged with flattening tires of engine in his charge. The Second Division held:

> "The absence of rules or practices which might clearly show the intent of the parties in agreeing to rule herein invoked makes this dispute a subject to negotiation—for the reasons stated in the above findings the claim cannot be sustained."

Reference to Award 55 of the Second Division will show that the employes in that case laid their claim on the call rule just as the signal employes lay their claim in this case.

Signal Maintainer Hughes is not entitled under the agreement rules to the time claimed, and to allow him the compensation claimed would clearly write a new rule. As held by the Second Division in the similar case occurring on the property of this carrier, if there is to be any new rule it is to be negotiated through the proper channels. Such negotiations are now under way with the shop craft employes as a result of Award 55 of the Second Division.

OPINION OF BOARD: On February 6, 1941 on the Chesapeake and Ohio Railway at Richmond, Virginia a yard engine ran through an interlocking switch causing a derailment which in turn required an investigation. The claimant in this case, Mr. E. E. Hughes, is Signal Maintainer and was in no case responsible for this accident nor in any way involved in it. He was, however, required by order of the Carrier to attend the investigation and did so between the hours of 4 and 6 P. M. on February 7, 1941. On that same day he had already served his regular turn of duty and had finished his assigned daily working hours which were from 7 A. M. to 3:30 P. M.

The claim in this case is founded on Rule 24 (a) between the Brotherhood and the Carrier, which provides:

> "Employes released from duty and notified or called to perform service outside of and not continuous with regular working hours, will be paid a minimum of three straight time hours for two hours work or less. * * *"

It will be noticed that the words "service" and "work" are used in this sentence and apparently used synonymously.

The claimant was called to the investigation on instructions of the Carrier only for the purpose of testifying as to conditions as he found them when called to the scene of the accident. The Carrier contends that the Call Rule (24) and the Overtime Rule (23) have never been applicable to attendance at investigations; that employes attending such an investigation as the one now being considered have never been compensated for their time except when the investigation took place during their regularly assigned tour of duty. That they were compensated when the investigation took place during their regularly assigned tour of duty is fully admitted in this record.

On oral argument of this matter before the Referee and the full Board an effort was made to distinguish between "service" and "work"; that it has been the practice of this Carrier not to pay for time spent attending investigations unless such attendance required absence from a regularly assigned tour of duty, in which case the employe would be made whole. They point to the fact that in this case the employe had received his full day's work and full day's pay; that he lost nothing by attending the investigation and that he should not be paid for this time. The Carrier also referred to negotiations leading up to the adoption of the present rule and to the rule concerning attending court as a witness, but these arguments are not helpful in the decision of the case.

There can be no doubt, in fact the parties to this dispute each admit, that the claimant in this case had no choice but to attend the investigation, and it is likewise admitted that had he refused to do so he would have been guilty of insubordination and subject to discipline—perhaps even to discharge. The effort to distinguish "work" and "service" are entirely vain. The fact is that the Carrier took two hours of Mr. Hughes' time for its own use and benefit and in the furtherance of its own business. Whether he worked or only stood and waited he is entitled to be paid for this time. Neither refinements of reasoning or quibbling by words can alter the plain facts of the case nor impair the justice of the Employes' position. The time consumed was his time, subject to directions from his employer to use it otherwise, and upon receiving such directions it was his duty to attend to his employer's business. It then became the duty of the employer to pay for that time at the agreed rate. This conclusion is sustained by Awards Nos. 588 and 1545 and the question should no longer be subject to dispute or argument.

The Board finds that the claim should be allowed.

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 should be allowed.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1942.