

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert G. Simmons, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

MISSOURI PACIFIC RAILROAD COMPANY

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement:

1. When on the afternoon of June 18, 1945, it called Chief Caller W. N. Beaulieu, whose regularly assigned hours were 11:00 P. M. to 7:00 A. M., rate \$6.16 per day, (sent Caller Strickland to Mr. Beaulieu's home—1546 Holly Street) and notified Mr. Beaulieu to report at the Assistant Superintendent, Mr. Harrell's Office at 4:00 P. M., which was during his unassigned hours, to appear as witness for the Company in investigation of Brakeman J. Kestner having missed a "call" and in which investigation Chief Caller Mr. W. N. Beaulieu was neither personally interested nor involved, and failed and refused and continued to refuse to pay W. N. Beaulieu for a "call", amount \$2.31, for which he filed claim;

2. When at about 6:30 P. M. on June 18, 1945, it called the Chief Caller W. N. Beaulieu, whose regularly assigned hours were 11:00 P. M. to 7:00 A. M., rate \$6.16 per day, (sent Caller M. D. Harkins to Mr. Beaulieu's home—1546 Holly Street) and notified him to report at the Assistant Superintendent, Mr. Harrell's Office at 7:00 P. M., which was during his unassigned hours, to appear as a witness for the Company in investigation of Brakeman Ira L. Thompson having missed a "call" and in which investigation Chief Caller Mr. Beaulieu was neither interested nor involved and failed and refused and continued to refuse to pay W. N. Beaulieu for a call, amount \$2.31, for which he filed claim;

3. That Chief Caller W. N. Beaulieu shall be compensated for two calls on June 18, 1945 at \$2.31 each, amount \$4.62, for time devoted as witness on June 18, in the two instances stipulated under Items No. 1 and No. 2 hereof, which time was utilized by the Carrier during the hours Mr. Beaulieu was off duty from his assignment of Chief Caller, which assigned tour of duty ended at 7:00 A. M. on June 18, 1945.

JOINT STATEMENT OF FACTS: Chief Caller W. N. Beaulieu is listed on the Clerks' Little Rock—Louisiana Division Station and Yards Group 1 seniority roster with a date of March 3, 1943.

We believe that the adoption of any different construction of the rule on which the Employees rely in the instant dispute would disregard the long line of decisions before this and other divisions of the National Railroad Adjustment Board where there has been a consistent holding that the National Railroad Adjustment Board is without authority to write a new rule or read into a contract that which its makers have not put there expressly or by clear implication.

We believe that if the parties to the current agreement had intended to make provisions for time consumed when attending investigations, without loss or expense to the employees, they would have incorporated such a specific rule into the agreement, and to hold otherwise is to enlarge upon the agreed-to rules of the contract.

The Carrier therefore respectfully submits that the claim in the instant dispute should be declined.

OPINION OF BOARD: When not on duty, the Claimant here, a Chief Caller, was called two times in the same day to attend investigations. The matter under investigation was the failure of train service employees to respond to calls. That the calls were made shows on Claimant's record. The Claimant attended the investigation, but was not asked any questions. Obviously, the Claimant was not at the time under investigation. Just as clearly, he was called to be a witness for the Carrier, if needed, and was not needed. We find nothing in this record to indicate any thought on the part of the Carrier on the day in question that Claimant had not made the calls as shown by his records.

In Award 3302 we undertook to analyze a series of awards that dealt with this general subject-matter, and which are relied upon here. That analysis will not be repeated here. We are of the opinion that the decision should turn upon whether or not there was mutuality of interest in the investigation; i. e., did the employee required to attend have a direct concern in the matter being investigated or did he attend merely as a witness?

Here it is obvious that the employee attended as a potential witness for the Carrier. The fact that the Carrier asked the Claimant no questions at all negatives any thought that the Claimant was involved as an interested party. True, the Claimant was potentially involved in that it might have developed that Claimant had failed in his duty, but there is no suggestion that that was the fact, or that the Carrier had any thought that such a fact would be developed.

It is true that an investigation might have been held to determine whether or not Claimant had done his duty, in such case a mutuality of interest would be involved. But such an investigation was not held.

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 Employees involved in this dispute are respectively carrier and employees 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 paid under the provisions of Rule 25(d).

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of March, 1947.