

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Fred L. Fox, Referee

PARTIES TO DISPUTE:

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

**FLORIDA EAST COAST RAILWAY COMPANY (SCOTT M.
LOFTIN AND JOHN W. MARTIN, TRUSTEES)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement

1. When on November 9, 1946, it required Chief Yard Clerk H. R. Bailey to report at Bowden Yard Office at 4:15 P. M., as a witness for the carrier in connection with an investigation in which he was neither involved nor interested, and failed and refused to compensate him in accordance with overtime rules, and

2. That Chief Yard Clerk H. R. Bailey shall be compensated on a call basis for the service rendered at the investigation, outside of his regular assigned hours, from 4:15 P. M., to 9:15 P. M., November 9, 1946.

EMPLOYEES' STATEMENT OF FACTS: Mr. H. R. Bailey was regularly assigned as Chief Yard Clerk at Bowden Yard and went on duty at 11:00 P. M., November 8, working until 7:00 A. M., November 9, 1946. At 3:15 P. M., November 9, 1946 Mr. Bailey was instructed over telephone to report at Bowden Yard as soon as possible to testify in connection with a written statement he had previously made to the effect that on the morning of November 5, 1946 he had heard passenger train No. 76 explode two torpedoes in front of the Bowden Yard office building shortly before that train collided with a transfer cut about two miles north of the yard office building. Bowden Yard office is located seven miles south of Jacksonville and Mr. Bailey resides about two miles from Mile Post 0, making approximately nine miles he had to travel in his automobile after being awakened, reporting at Bowden Yard office at 4:15 P. M., and was held until 9:15 P. M. He filed claim for five hours overtime.

On November 15, 1946, the following letter was addressed to Chief Yard Clerk H. R. Bailey by the General Yardmaster:

"Your time ticket dated November 9, 1946, claiming 5 hours overtime for attending an investigation at Bowden Yard on Saturday, November 9, from 4:15 P. M. to 9:15 P. M. as a witness for the Railway is declined as it is not supported by Rule 52 of Clerks' Agreement as your attendance at the investigation did not cause an 'interruption' of your assignment; however, we will as a matter of equity in this specific case, allow you pay for 5 hours at pro-rata rate covering your attendance at the investigation."

done so also. The Carrier involved in Third Division Award 3089 has made a comprehensive analysis of the First, Second and Third Division Awards in which this determination has been made, and, since, due to the presence of Rule 52 in the instant case, the question is not particularly pertinent, the Railway will not unduly lengthen its submission here, beyond referring the Third Division to the Position of the Carrier in Award 3089.

6. While the General Yardmaster was under no agreement obligation to do so, he took cognizance of circumstances in this particular case which he felt warranted special consideration for Clerk Bailey, and he, therefore, allowed him five hours at the pro rata rate for the time spent in the investigation as a matter of equity. The decision as to whether or not to bestow such gratuities not provided by agreement, of course, rests entirely with the Railway.

The claim is entirely without merit and should be denied.

OPINION OF BOARD: On January 9, 1947, the claimant, H. R. Bailey, was Chief Yard Clerk at Bowden Yard, (Jacksonville), with assigned hours of duty from 11:00 P. M. to 7:00 A. M., with Sunday as his day off. At 3:15 P. M., on Thursday, January 9, 1947, Bailey was called by a representative of the Carrier, and instructed to report at Bowden Yards as soon as possible, to testify in connection with a written report he had previously made relative to a train collision. Bailey lived some nine miles from Bowden Yards, and was held on duty in the investigation from 4:15 to 9:15 P. M., for which he claims five hours pay at the overtime rate. His claim is based on Rule 46 of the Clerks' Agreement. The docket does not disclose that the claimant was in any way interested or involved in the occurrence under investigation, and the service he rendered the Carrier was at its special instance, and in its interest.

The facts in this case are, in substance, the same as those presented in Dockets Nos. CL-3947, 3948, 3949 and 3950, on which separate awards have been made this day. On Docket CL-3947, Award No. 3966 has been made, which contains a full discussion of the reasons therefore, and that award was followed in the awards on the other dockets above mentioned. We now reaffirm our ruling in the said awards, and hold that the claimant is entitled to overtime pay for the five hours he spent in the investigation aforesaid, under Rule 46 of the Clerks' Agreement.

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 Carrier violated the Agreement as charged by Petitioner.

AWARD

Claims (1 and 2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of June, 1948.