Award No. 3987

Docket No. CL-3952

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 October 7, 1945, it required Clerk C. R. Buck, Vero Beach, to report at New Smyrna Beach at 1:30 P. M. to attend investigation called for the purpose of developing facts and placing responsibility in connection with shortage of a piece of baggage destined Vero Beach, and

2. That Clerk C. R. Buck shall be compensated on a call basis for service rendered at the investigation on Sunday, his day of rest, from 8:30 A. M. to 10:30 P. M. October 7, 1945.

EMPLOYES' STATEMENT OF FACTS: Clerk C. R. Buck was regularly assigned at Vero Beach to work 8:00 A. M. to 12 Noon and 1:00 P. M. to 5:00 P. M. raily EXCEPT Sunday and specified holidays. He was instructed to attend investigation at New Smyrna Beach, 103 miles north of Vero Beach, at 1;30 P. M., Sunday, October 7, 1945, which was his day of rest.

Clerk Buck filed claim for compensation at overtime rate from the time he left Vero Beach on the morning of October 7, 1945 until he returned there that evening. On December 22, 1945, the Agent wrote him as follows:

> "Your overtime slip dated October 7, 1945, received in my office December 14th, 1945, is declined as it is not supported by rules of Clerks' Agreement."

District Chairman of the Brotherhood addressed the following letter to the Superintendent on December 26, 1945:

> "On September 24, 1945, Trainmaster R. D. Domingus instructed Clerk C. R. Buck at Vero Beach, to appear at the Agent's office, Vero Beach, 1:30 P. M., Septemebr 27, 1945, when formal investigation would be conducted to 'develop facts and place responsibility' in connection with improper handling of a piece of baggage moving under PRR Check No. 75362, consigned to Vero Beach and put off at Melbourne.

5. The Railway has shown that this claim is directly contrary to the provisions of Rule 34 as applied and mutually understood by both the Railway and the Employes throughout the life of the Clerks' Agreement, and that it is also directly denied by the opinion of the Referee in Award 223 on which the Employes rely. It is also shown that Clerk Buck has, through error, already been compensated in accordance with the Call and Travel Time Rules of the Agreement for attending this investigation outside of his assigned hours. Under any consideration, therefore, the claim is entirely without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: On October 7, 1945, the Claimant, C. R. Buck, a clerk in the office of the Carrier at Vero Beach, Florida, with assigned hours of work from 8 A. M. to 5 P. M., with one hour lunch period, and with Sunday as his day off, was required by the Carrier to attend an investigation at New Smyrna Beach, 103 miles north of Vero Beach, to develop facts and place responsibility for the improper handling of baggage, consigned to Vero Beach, but put off at another point. Buck was involved in this investigation to the extent that he was charged with not making proper report of baggage shortage at Vero Beach, on July 3, 1945. The investigation was first called to be held at Vero Beach on September 27, 1945, but, at the request of the General Chairman, was postponed to October 3, and then because other parties at other points on the Carrier's line were involved, it was finally called for New Smyrna Beach on Sunday, October 7, 1945, at 1:30 P. M. Claimant attended the investigation and was exonerated, on the evidence taken on the hearing, from the charges against him. He claims pay for services on time spent from 8:30 A. M. to 10:30 P.M., fourteen hours, at overtime rates.

Claimant was called for service on his day off and, but for the fact that he was involved in the matter under investigation, would be entitled to be paid at overtime rates, under Rule 46 of the Clerks' Agreement, as has been recently held by us in Award No. 3966, and four other awards immediately following. But the fact that Claimant was so involved presents a situation different from the cases referred to above. True, the Claimant was exonerated from the charges against him, but when he was called, and when he appeared at the investigation and testified, he was laboring under charges which, as the situation then was, stood as a blot on his service record, and which, if sustained, might entail suspension or even dismissal from the service. Therefore he did not, as in the other cases, appear at the investigation solely in the interest of the Carrier. He had his own interests and his job at stake. The contention advanced that when the Carrier required Claimant to attend the investigation, it knew that he could not be held to be guilty of any neglect or wrongdoing, and therefore, he was, in fact, called to testify in the interest of the Carrier is not convincing, and is rejected. Clearly, we have here a case where an employe, under charges, is called upon to attend an investigation based on such charges. The fact that others may be involved does not change the situation.

There was no irregularity or violation of the Agreement in connection with the time of holding the investigation. Originally set for September 27, 1945, at Vero Beach, it was postponed, at the request of the General Chairman, to October 3, presumably at the same point. Then, apparently without objection, it was called for New Smyrna Beach for October 7, and the investigation then held without prejudice to anyone.

We therefore reach the question of the rule of the Clerks' Agreement applicable to the admitted facts in this case.

We do not believe that Rule 46 of the Clerks' Agreement can be applied to this case. That rule has never been held to apply to an investigation where the party making the claim was himself involved in the matter being investigated. So far as we have observed, every application of a rule similar in substance and effect, to Rule 46 of the Agreement here involved, has been in cases where the Claimant was not himself involved in the matter

being investigated. We have only to refer to Awards Nos. 588, 1545, 2032, 2223, 2824, 3478, 3722 and 3911. In Award No. 2223, in limiting the application of the rule, we said:

> "We think the time has come when we should say that where the employe is not himself involved in a matter being investigated, and he is called by the Carrier, in its own interest, to attend an investigation, he should be paid, . . ."

This language was referred to and quoted, with approval, in Award No. 2824. No subsequent award departs from that principle, and the awards cited, we think, justify us in limiting the application of Rule 46 of the applicable Agreement to a case where the claimant is not involved in the investigation he attends.

This being true, what is the applicable rule? Rule 34 of the Agreement provides for the case where, as here, the claimant is involved, but is exonerated from fault, on the evidence heard on the hearing on the pending charges. It reads:

> "If the final decision decrees that charges against the employe were not sustained, the record shall be cleared of the charge; if suspended, or dismissed, the employe shall be reinstated and paid for all time lost, less amount earned elsewhere during suspension or dismissal."

The fact that Claimant was called on his day off is unimportant, for he was answering charges filed against him. He lost no time. Had he been called on one of his working days and lost time, he would have been entitled, on his exoneration, to be paid therefore, under Rule 52 of the Agreement. He attended this investigation, partly at least, in his own interest, and, even though exonerated, is not entitled to be paid when he lost no time. In our opinion, Rule 34 of the Agreement covers this claim, and under it the claim must be denied.

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 there was no violation of the Agreement.

AWARD

Claims (1 and 2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 15th day of July, 1948.