

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

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

KENTUCKY & INDIANA TERMINAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Terminal Committee of the Brotherhood that:

(a) Carrier violated the spirit and intent of current Clerks' Agreement by refusing to compensate Relief Rate Clerk James A. Wright for time lost and expense incurred while enroute and attending Federal Court at Fort Dodge, Iowa, May 4th through May 10th, 1947.

(b) Carrier reimburse Mr. Wright the sum of \$27.43, the deficit between time lost plus expenses and the amount received from the United States Treasurer for mileage, subsistence, and witness fees.

EMPLOYEES' STATEMENT OF FACTS: Around April 20, 1947, K. & I. Terminal Railroad Rate Clerk James A. Wright was served with a subpoena issued by the United States Attorney, Northern District of Iowa, Central Division, commanding him to appear in Federal District Court at Fort Dodge, Iowa, on May 5th, 1947, as a witness concerning the preparation of a waybill covering a carload of alcoholic liquors which was robbed at Manly, Iowa, on the Rock Island Railroad.

On receiving the subpoena Wright went to his immediate superior General Freight Agent Mr. J. A. Howison, to ascertain from him the particulars of this court case. Mr. Howison arranged for transportation to and from Fort Dodge (which incidentally was not credited against the one pass per year restrictions imposed on K. & I. employes at that time), and he also requested information from the C. I. & L. Railroad Chief Special Agent Mr. W. I. Spittler concerning this case. On receipt of the Chief Special Agent's letter dated April 28th, 1947, (Exhibit No. 1) Mr. Howison had prepared a copy of the waybill and presented it to Wright. On receipt of copy of this waybill covering car P&LE 1093 Wright realized he had rated this shipment but had not prepared the original waybill as had been reported to the C. I. & L. Chief Special Agent by Mr. John Noon, Chief Clerk to Mr. Howison. Wright so informed Mr. Howison, who in turn advised him to proceed to Fort Dodge regardless as it was then too late to arrange transportation for Mr. Frank J. Hughes, the employe who actually prepared the waybill involved.

Wright went to Fort Dodge, Iowa, and on his return he presented the K. & I. Terminal with a claim for \$51.50 itemized actual expenses, and for seven days wages during the period from May 4th through May 10th amount-

fyng for the benefit of the carrier or in other words, the U. S. Attorney would be representing the Government and the people, nevertheless, the carrier benefits from the testimony of Witness Wright. Therefore, we think it can be said that the facts in this case present an exception to Rule 35 and that the carrier should comply therewith."

It will be observed that Claimant Wright concludes the paragraph with the statement: "Therefore, we think it can be said that the facts in this case present an exception to Rule 35 and that the Carrier should comply therewith." Rule 35, let us point out, contains no exceptions. Claimant Wright then must be seeking a benefit neither expressly nor impliedly a part of the Agreement. He requests this Board to substitute a new rule for the one in effect, a matter which, Carrier holds, is not within the scope of the duties of the Adjustment Board.

(Exhibits not reproduced.)

OPINION OF BOARD: The controlling facts relating to this Claim are not in dispute. On September 18, 1945, rate clerk Hughes in the employe of the Carrier at Louisville issued a waybill in connection with the shipment of a car of whiskey from that point to Minneapolis. The car containing the shipment was robbed at Manly, Iowa, on September 23rd, allegedly by employes of another railroad. At the request of the Chief Special Agent of the Monon, an intermediate carrier, for the name of the employe that had issued the waybill, the Chief Clerk to the Carrier's General Freight Agent erroneously supplied the name of the Claimant. This resulted in the Claimant being subpoenaed to appear before the United States District Court at Fort Dodge on May 5, 1947, to testify as a witness for the Government at the trial of one of the persons charged with having committed said robbery.

Upon receipt of said subpoena, the Claimant went to the Carrier's General Freight Agent and pointed out that it was Hughes, rather than the Claimant, who had issued the waybill. The record shows that the General Freight Agent thereupon "advised (the Claimant) to proceed to Fort Dodge regardless as it was then too late to arrange transportation for . . . Hughes."

The Claimant lost seven days on account of attendance at said trial for which he claims, by way of wages and expenses, \$123.23, less \$95.80 paid to him by the Government. Rule 35 of the current Agreement is relied upon as supporting the Claim, the pertinent parts of which are as follows:

"(a) Employes taken away from their regular assigned duties at the request of the Management to attend court or to appear as witnesses for the Company, will be furnished transportation, if outside city, and will be allowed compensation equal to what would have been earned had such interruption not taken place, and in addition, necessary actual expenses if away from headquarters."

"(e) Any fees or mileage accruing will be assigned to the Company."

Three propositions are urged by the Petitioner. These are (1) the misinformation supplied by the Carrier to the effect that the waybill was issued by the Claimant was responsible for him being subpoenaed; (2) the Carrier's General Freight Agent specifically advised the Claimant to respond to the subpoena; and (3) in effect the Claimant attended the trial as a witness for the Carrier, since the trial, though a criminal prosecution, was for the Carrier's benefit and protection.

We cannot sustain the Petitioner's contentions. The Rule quoted is clear and unambiguous. It does not admit of construction or interpretation. It is applicable only to those situations where an employe is requested by the management to attend court or appear as a witness for the Company. Such was not the case here. Assuming that the misinformation supplied by the Carrier as to the identity of the person who issued the waybill was the cause of the Claimant being called as a government witness, this was nothing more

than the combination of a routine transaction and an honest mistake. There is nothing unusual about carriers exchanging information or furnishing it to governmental agencies. The conduct of the Carrier's General Freight Agent in advising the Claimant to respond to the subpoena was also without significance. In fact, the General Agent would have laid himself liable for obstructing a court process if he had done otherwise. Nor can we regard the prosecution in the Federal Court as having been for or on behalf of the Carrier. Proceedings for the enforcement of the criminal laws are for the protection of the public rather than for the redress of private wrongs.

It would be necessary for us to ignore the clear import of the language of the Rule to find any basis for sustaining the Claim. There may be strong moral reasons why the Carrier should have made the Claimant whole, but we have repeatedly pointed out that it is not the function of this Board to make contracts for the parties, or to treat as ambiguous the provisions of agreements when the meaning is perfectly clear. It will be better for all parties concerned, in the long run, if they are required to negotiate modifications of their agreements, as experience dictates needs for changes, rather than that they should find themselves the unwilling victims of a system of Board-made rules.

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 employes involved in this dispute are respectively carrier and employes 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of January, 1949.