Award No. 4569
Docket No. CL-4521

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that C. O. Hogue, Yardmasters' Clerk, Barstow, California, shall be compensated on basis of a call (3 hours) at the rate of his regular assignment and for one (1) hour at time and one-half rate account being required to attend investigations as a Company witness on July 14, 1947.

EMPLOYES' STATEMENT OF FACTS: C. O. Hogue occupies position of Yardmaster's Clerk, hours 3:00 p.m. to 11:00 p.m. On July 11, 1947, Trainmaster Crawford notified him to report at 10:00 a.m. Monday, July 14, 1947, as a witness is a formal investigation involving failure of Yardman W. H. McCanless to protect his assignment July 10, 1947, in violation of Rule "O". Mr Hogue was not involved in or responsible for the Yardman's failure to protect his job concerning which investigation was being held. Hogue was also notified to report at 2:00 p.m. the same date as a witness in another formal investigation involving failure of Yardman E. J. Cargle, Jr. to protect his assignment July 10, 1947, in violation of Rule "O". Hogue was in no wise responsible for this Yardman's failure to protect his job and was called to attend the investigation as a Company witness. Trainmaster Crawford's notices of July 11, 1947, calling the investigation, read as follow:

"Barstow, California
July 11, 1947
File 1029

"Mr. W. H. McCanless
Yardman
Barstow, California

"Dear Sir:

"Formal investigation will be held in Trainmaster's office, Barstow, at 10:00 AM Monday, July 14, 1947, to develop the facts and place the responsibility for your failure to protect your assignment, 10:30 PM July 10, 1947, violation of Rule O.

"Arrange to be on hand with witnesses and representative if desired.

"By copy of this letter Crew Dispatcher Coy Hogue is notified to appear as witness.

"Acknowledge receipt in space provided below and return to Trainmaster's office.

"Yours truly,

/s/ H. G. CRAWFORD
Trainmaster"

cc—Coy Hogue

not have a mutuality of interest with the Carrier in the investigation. Aside from the fact the majority's decision in those awards completely ignored the weight of authority as expressed in a majority of the Third Division's awards on the subject that attendance of an employe at an investigation or at court was not "work" as contemplated by the overtime and call rules, their reasoning with respect to the claimant's mutuality of interest in the investigation was not only speculative but entirely without foundation under the agreement rules. In other words, the sustaining decision in those awards was apparently based on the fallicious reasoning that attendance at an investigation was not "work" as contemplated by the overtime and call rules if the claimant had a mutuality of interest with the Carrier in the investigation, but was "work" if the claimant did not have such a mutuality of interest. The fallacy of such reasoning should be apparent to all. Both situations involve attendance at investigations, and if any distinction was intended as between the two situations it would have been expressed in the agreement rules. In any event, the question of mutuality of interest has no bearing on the instant dispute, and cannot take precedence over the provisions contained in Article IV, Section 1-i, of the Clerks' Agreement which expressly provide that employes attending investigations will only be guaranteed against any loss of earnings on their regular assignment by reason thereof.

The failure of any tribunal to recognize and be governed by the principle it has enunciated in a majority of its decisions on a subject can only lead to confusion and continued disagreement with respect to the application of similar agreement rules, a circumstance which the amended Railway Labor Act was primarily intended to eliminate. It is fundamental that the application of any agreement rule or rules cannot be changed from day to day to meet the conclusions expressed in such conflicting awards. In the instant case, the language of Article IV, Section 1-i, was incorporated into the current Clerks' Agreement to express the Carrier's then well established method of compensating employes for attendance at investigations, the non-payment of employes for attendance thereat outside their assigned hours being in accord with the then well established principle expressed in Awards Nos. 134, 409, 605, 773 and 1816. The Carrier's non-payment of the employes named in 198 of the 228 instances of record listed in the Carrier's Exhibit "A" supports the Carrier's position with respect to the meaning and intent of Article IV, Section 1-i, and is, moreover, in conformity with the principle expressed in the above-mentioned and other awards of the Third Division, as well as the language of the rule. It is only reasonable to assert that comparatively recent awards on the subject which may be in conflict with that principle may not and cannot properly be used at this late date as authority to revise the provisions of Article IV, Section 1-i, and nullify the well established application of that rule on this Carrier's property.

In conclusion, the Carrier reasserts that the Employes' claim in this dispute is entirely without support under the agreement rules and should be denied for the reasons heretofore expressed.

(Exhibits not reproduced.)

OPINION OF BOARD: In the past these has been some conflict in our awards upon claims for pay for attendance at investigations as witnesses upon request of the Carrier outside the regularly assigned hours of work of the claimant. However the last award denying such a claim under rules similar to those herein was Award No. 3343 in November 1946. Since that award we have consistently held otherwise in Awards Nos. 3462, 3478, 3722, 3911, 3912, 3966 and 3968.

One of the basic purposes for which this Board was established was to secure uniformity of interpretation of the rules governing the relationships of the Carriers and the Organizations of Employes. To now add further fuel to the pre-existing conflict in our decisions upon this subject would only invite further litigation upon the subject and would be contrary to one of the basic reasons for the existence of this Board.

The contentions of the Carrier herein have been advanced by the Carriers in some or all of the later awards mentioned above and to answer them again would only be repetitive. Such later awards have sustained claims of this nature in cases where the claimant had no "mutuality of interest." Accordingly this claim should be sustained.

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

The Carrier violated the Agreement.

AWARD

The Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois this 29th day of September, 1949.