

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees:

1. That Carrier violated rules of our current Agreement, effective December 1, 1944, particularly Rules 28—Basic Day, 36—Overtime, 38—Notified or Called, and 46—Witnesses, when Management declined to compensate Brother E. B. Kyle, Assistant Chief Clerk, Interbay Yard, for services performed at direction of Management in attending investigation incident to failure of Brakeman Foote to show for his regular job as Brakeman on 1/442 on November 19, 1947, and

2. That Mr. Kyle be compensated for his services performed namely, two hours pay at rate of time and one-half, amount \$4.05, based on his daily rate of \$10.82.

EMPLOYEES' STATEMENT OF FACTS: The claimant, Mr. Kyle, is an employe of the Carrier as Assistant Chief Clerk at Interbay Yard. His assigned hours of service are from 3:00 P.M. to 11:00 P.M. Daily rate of pay—\$10.82. The duties required of his position are, among others, the calling of crews and handling of the Crew Board (train service employes).

Train No. 1/442 was, on November 20, 1947, due to depart from Interbay at 12:15 A.M., or one hour and fifteen minutes after Mr. Kyle's tour of duty terminated at 11:00 P.M., November 19, 1947. Mr. Kyle's normal duties, however, required of him the calling of the crew for this train, advice and/or record of which is recorded by him in the Call Book that is considered as the Carrier's record and at all times available to Carrier's local officials including the Trainmaster, whose office and headquarters are in Interbay.

Brakeman C. H. Foote was a regular member of the train crew called for 1/442. At or about 9:45 P.M., November 19, 1947, Brakeman Foote called the Caller, Assistant Chief Clerk Kyle, and was told of his call for 1/442 and further advised of a contemplated change being made in the cabooses to afford Brakeman Foote an opportunity to get his equipment and transfer it to the caboose scheduled to go out on 1/442. Brakeman Foote accepted the call that required his reporting for duty at 11:45 P.M. November 19, 1947, and this fact was so recorded in the aforementioned Call Book. (Emphasis supplied)

On November 20, 1947, Mr. Kyle was notified by Superintendent I. E. Clary to report for an investigation to be held in the Trainmaster's Office at Interbay at 11:00 A.M., Saturday, November 22, 1947, to develop facts and place responsibility for a 45 minute delay to 1/442 caused by the failure of Brakeman Foote to show for his regular job on this train. (Emphasis supplied) (Employees' Exhibit No. 1) Mr. Kyle complied with the instructions he received from the

the grounds that there is no rule to cover allowing compensation for this claim in attending an investigation.

Exhibits not reproduced.

OPINION OF BOARD: This case is similar to that decided by our Award No. 4569 except that herein the notice to the claimant from the Carrier relative to the investigation placed his name at the top with that of a brakeman. Thus the Carrier contends that he was a principal and had a mutuality of interest in the investigation.

The notice, however, clearly stated the purpose of the investigation was to "place responsibility relative to 45 minute delay to 1/442 due from Interbay November 20, 1947, 11:45 P.M., caused by failure of Brakeman Foote to show for his regular car on this train." That does not show any claim of misfeasance, malfeasance or nonfeasance as to the claimant nor did the investigation result in any such charge. Placing his name at the top of the notice instead of listing him as a witness at the bottom cannot convert his role of witness to that of principal. Such role depends upon the charge made and the responsibility shown by the facts. Here he had no mutuality of interest in the investigation.

Accordingly our Award No. 4569 governs this case and the 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 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

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.