

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Thomas C. Begley, Referee

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**PARTIES TO DISPUTE:**

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

**SOUTHERN PACIFIC COMPANY (PACIFIC LINES)**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that the Carrier violated and continues to violate the Clerks' Agreement:

(a) When on Friday, July 16, 1948, it required regularly assigned Chief Train Crew Dispatcher, Mr. Richard W. McManus, Sacramento, California, to report at 9:00 A.M., as witness for the Carrier in connection with investigation involving Yardman D. A. Waggoner, in which investigation Mr. McManus was neither involved nor interested, and failed and refused to properly compensate Mr. McManus at the rate of time and one-half for this service performed on his regular assigned rest day;

(b) That Chief Train Crew Dispatcher Richard W. McManus shall be compensated for an eight (8) hour call at the rate of time and one-half of his assigned position in lieu of eight (8) hours straight time compensation allowed, for rendering service as witness for the Carrier on Friday, July 16, 1948, his regular assigned rest day.

**JOINT STATEMENT OF FACTS:** 1. There is in evidence an agreement between the carrier and its employees represented by the petitioner, bearing an effective date of October 1, 1940, which agreement (hereinafter referred to as the agreement) was in effect on the date involved in the instant claim. A copy of the agreement is on file with this Board and is hereby made a part of this dispute.

2. On the date of the instant claim, July 16, 1948, Richard W. McManus (hereinafter referred to as the claimant) was regularly assigned to position No. 5, Chief Train Crew Dispatcher, at Sacramento, California, the rate of pay of the position being \$10.79 per day, with hours of assignment 8:00 A.M. to 4:00 P.M. daily except Friday.

3. On his rest day, Friday, July 16, 1948, claimant was required to report at office of terminal superintendent at Sacramento to appear as a witness on behalf of the carrier in an investigation held to determine responsibility of a yardman charged with violation of Rule 810, Rules and Regulations of the Transportation Department. The claimant was in no way involved in the investigation. The investigation convened at 9:00 A.M. and adjourned at 9:40 A.M., same date.

aside as it were a fundamental principle that the right to instruct or supervise carries with it the obligation to pay for that right.' The claim was denied and we note your Board's comment:

"The Board is of the opinion that under the rule which confronts us, the record showing that the Employee lost no time in attending the investigation, he suffered no loss and as he had no expenses, an affirmative award is not justified."

In further support of the carrier's assertion that attendance at an investigation is a special service not within the intent of Rule 21 (d) or Rule 25 of the agreement, the attention of the Board is respectfully directed to that portion of its opinion in Award No. 3230, reading:

"There is no rule of the agreement providing for pay for attendance by an employee at an investigation instituted by the carrier. Rule 6 provides for compensation and reimbursement for expenses when an employee at the request of the carrier attends court or appears as a witness for the carrier in court proceedings. Both sides, however, agree that this rule has no application here. To come within Rule 10 (c) the attendance by this employee must be regarded as 'work' as that word is used in the rule.

"This question has been discussed in a number of awards, which, though not uniform, have fairly consistently held that attendance at an investigation is not 'work' as that word is used in the rules. Awards 134, 1032, 1816, 2132, 2508, 2512.

"The parties could have specifically provided by a special rule payment for time spent while on such duty. The fact that there is no such rule may well indicate that they were unable to agree on this problem. Under such circumstances this Board is without power to intervene. We cannot write a rule on the failure of the parties to agree, nor should we by a forced construction apply another rule in a way in which they did not intend."

and the award:

"Claim denied."

In conclusion, carrier asserts that in the light of the foregoing facts and cited awards, there is no basis for the claim in this docket, that it is entirely lacking in agreement support, as well as past practice, and that claimant has been equitably compensated for the special service rendered, and respectfully submits that this Division should so find and render a decision sustaining the carrier's position.

(Exhibits not reproduced).

**OPINION OF BOARD:** The facts are not in dispute in this matter before the Board. Claimant McManus was regularly assigned Position No. 5, Chief Train Crew Dispatcher, at Sacramento, working 8:00 A.M. to 4:00 P.M. daily except Friday. The Carrier required claimant to appear as a witness for the Carrier at an investigation on his rest day, Friday, July 16, 1948. The claimant was not involved or interested in the investigation. The investigation convened at 9:00 A.M. and adjourned at 9:40 A.M. Claimant was allowed eight hours at pro rata rate as compensation by the Carrier. Claim was submitted by the claimant claiming eight hours at the time and one-half rate under Rule 21 (d).

Rule 21 reads:

"Rule 21—Notified or Called.

(a) An employee notified or called to perform work not continuous with the regular work period shall be allowed a minimum of two (2) hours at overtime rate for two (2) hours work or less, and if held on

duty in excess of two (2) hours, the overtime rate shall be allowed on the minute basis. Each call to duty after being released shall be a separate call.

(b) An employee who has completed his regular tour of duty and has been released, and who is required to return for further service within less than one (1) hour following such release, may be compensated as if on continuous duty.

(c) An employee required to report for duty before his assigned starting time and who continues to work through his regular shift, shall be paid two (2) hours at the overtime rate for two (2) hours work or less, and at the overtime rate thereafter on the minute basis for the time required to work in advance of his regular starting time.

(d) Except as otherwise provided in Rule 25, employees notified or called to perform work on Sundays, week-day off days, or holidays, shall be paid a minimum of eight (8) hours at time and one half."

The parties state that there is no rule in the effective Agreement which specifically spells out what compensation shall be paid to employees when called as witnesses at an investigation.

It is admitted by the parties in this claim that this claimant had no mutuality of interest in this investigation. Therefore, he should be paid. The only question is how much compensation should he receive under the rules of the Agreement.

All awards since Award 3343 have held that if there is no mutuality of interest, the employee called as a witness shall be paid for his services under the Call Rule, if there is no rule that specifically spells out what he shall be paid to attend an investigation. Awards 3462, 3478, 3722, 3911, 3912, 3966, 3968, 4570, 4573 and 4911.

Under the Call Rule, 21 (d), of this Agreement, the claimant was entitled to be paid for eight hours at time and one-half. Claim sustained.

**FINDINGS:** The Third Division of the Adjustment Board upon the whole record and all the evidence, finds and holds:

That both parties of this dispute waived oral hearing thereon;

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

Carrier violated the terms of the Agreement.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 4th day of August, 1950.