

Award No. 5220
Docket No. MW-5126

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**CHICAGO, SAINT PAUL, MINNEAPOLIS AND OMAHA
RAILWAY CO.**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated the effective Agreement when they required Section Foreman H. E. Hansen to travel for a period of 9 hours outside of his regular assignment on both March 15 and 18, 1949, and failed to compensate him for the time consumed traveling.

(2) That H. E. Hansen be paid at his straight-time rate of pay for a total of 18 hours because of the carrier's improper action.

JOINT STATEMENT OF FACTS: At 3:00 P. M. on March 15, 1949, Section Foreman Herman Hansen, Sioux City, Iowa was instructed by Roadmaster V. Larson to arrange to leave Sioux City on train No. 210 at 10:15 P. M. that evening, as the Railway Company wanted him to appear as a witness in connection with a law suit which was being conducted at Minneapolis, Minnesota, such suit starting at 10:00 A. M., March 16, 1949.

At 10:00 P. M., March 15, Foreman Hansen reported to the depot at Sioux City, Iowa, boarded train No. 210, and arrived at Minneapolis at 7:00 A. M. on the following morning.

Foreman Hansen was released from his duties as a witness in the afternoon of March 18, 1949. He then took the first available train to Sioux City, such train leaving Minneapolis at 10:00 P. M., March 18. He arrived in Sioux City at 7:00 A. M., March 19.

Travel time was claimed in favor of Mr. Hansen in the amount of nine (9) hours for traveling on March 15 and nine (9) hours for traveling on March 18, such claim being based on the provisions of Rule 35 of the effective agreement.

The claim was declined by the Carrier based on provisions of Rule 39 of the effective agreement.

The agreement between the two parties to this dispute, dated June 1, 1945, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

Rules 35 and 39 of agreement here involved have been in effect on this property substantially as contained in current agreement for a period of upwards of twenty years and in no instance of record have employees required to attend court or inquest as witness for the carrier been compensated for travel time under provisions of rule 35 of current agreement but to the contrary they have in all instances of record been compensated under provisions of rule 39 of the controlling agreement and in same manner as has been the claimant here involved been compensated.

The carrier reiterates its position that rule 39 and not rule 35 is applicable to the facts here in evidence and the claimant having been compensated in accordance therewith has not further proper claim.

OPINION OF BOARD: The System Committee of the Brotherhood of Maintenance of Way Employees claims Carrier violated the provisions of its effective Agreement with them when, on March 15 and 18, 1949, it failed to compensate Section Foreman H. E. Hansen for nine hours on each of said days for time he consumed traveling outside of his regular assignment. The Committee asks that Claimant be paid for the nine hours so consumed on each of said days at the rate of his pay.

Claimant, by direction of the Carrier, left Sioux City, Iowa, his home headquarters, at 10:15 P. M. on March 15, 1949, to go to Minneapolis, Minnesota, to appear as a witness for the Carrier in a law suit to be tried there. The case was set for trial on March 16, 1949 at 10:00 A. M. Claimant arrived at Minneapolis at 7:00 A. M. on March 16. He was released from his duties as a witness during the afternoon of March 18. He left Minneapolis that evening at 10:00 P. M., arriving at Sioux City at 7:00 A. M. on March 19.

When Claimant was directed by the Carrier to go to Minneapolis to attend court he was in the services of the Carrier while so doing. See Awards 2824, 3987 and 4834 of this Division. In the absence of any other rule in the parties' Agreement effective June 1, 1945, he would be subject to the provisions of Rule 35 thereof.

However, the parties' effective Agreement provides, by Rule 39 thereof, as follows:

"Employees attending court under instructions from the railway company shall be paid the equivalent of the regular assigned hours at pro rata rate for each day so held and living expenses while away from home."

This Rule specifically relates to employees required by the Carrier to attend court as witnesses. It provides what they are to receive while their services are so engaged, that is, they are to receive pay equivalent to what they would have received for their regular assignment for each day so held together with their living expenses while away from home. Being specific, in that it relates expressly to employees required by the Carrier to attend court as witnesses, it is controlling here and Claimant's rights are limited by its terms. If additional or other compensation is to be made, such as here claimed for time consumed traveling to and from the point where required to attend court, the Rule will have to be changed to so provide for, in the absence thereof, we cannot allow payment other than has been agreed upon by the parties themselves.

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

Carrier has not violated 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 16th day of February, 1951.