

Award No. 9420

Docket No. CL-8907

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Merton C. Bernstein, Referee

PARTIES TO DISPUTE:

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

LEHIGH VALLEY RAILROAD COMPANY

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

(1) The carrier violated the Clerks' Agreement when, on Monday, June 6, 1955, and Tuesday, September 27, 1955, it required regularly assigned Asst. Baggage Agent Peter Guererri, Geneva, N. Y. to attend investigation at Sayre, Pa. in connection with investigations that Mr. Guererri was neither involved nor interested in, and failed to properly compensate Mr. Guererri at the rate of time and one-half for this service performed on his regularly assigned rest day:

(2) That Assistant Baggage Agent Peter Guererri shall be compensated for eight (8) hour call in lieu of eight (8) hours straight time compensation allowed for rendering service as witness for the Carrier on Monday, June 6, 1955 and Tuesday, September 27, 1955, his regularly assigned rest days.

EMPLOYES' STATEMENT OF FACTS: The investigation held Monday, June 6, 1955, at Sayre, Pa. was to determine the responsibility for an altercation that took place at Geneva Passenger Station, Geneva, N. Y. between Telegrapher Long and Trainman Dilmore May 28, 1955. Mr. Guererri was on duty and was neither involved nor interested.

The investigation held Tuesday, September 27, 1955 at Sayre, Pa. was to have a record of an injury to Trainman Bennett, due to falling down the stairway at Geneva Passenger Station, Geneva, N. Y. July 8, 1955. Mr. Guererri was on duty and called a Doctor. He was not involved.

The distance from Geneva, N. Y. to Sayre, Pa. is 73 miles. Mr. Guererri was transported to Sayre and returned to Geneva in the Company automobile on both dates. About 7 hours of Mr. Guererri's time was taken up on each of the dates involved.

Correspondence relating to this dispute is reproduced.

"Buffalo, N.Y. June 20, 1955
220.123

(d) Any fee or mileage accruing will be assigned to the railroad."

POSITION OF CARRIER: It is the position of the Carrier in this case that Mr. Guererri while attending the investigations mentioned herein in the claim was paid correctly in accordance with Paragraph (c) Rule 52, of the schedule agreement between the parties. This rule provides that witnesses when held away from their home station on rest days or holidays will be allowed a minimum of one day's pay at pro rata rate for each day so held and the claimant herein was paid strictly according to the rule. This is the only rule providing payment for employees under the agreement when called as witnesses.

It will be noted in the Statement of Claim that it is contended that Mr. Guererri "was neither involved nor interested in" (emphasis ours) such investigations. In this statement Carrier cannot agree. By the very fact that he is an employe of this Carrier makes him vitally interested in any matter in which his employer might require his service as a witness to occurrence of which he may have knowledge. He certainly is involved if he was present and sees and hears an altercation as that which occurred between the two other employes at Geneva, N. Y., passenger station on May 28, 1955, and most certainly he is involved in the injury to Trainman Bennett on July 8, 1955 as he first discovered the injured employe and took action on behalf of the Carrier at the time. To say that he was not an interested party nor an involved party in both of these occurrences is without merit and needs no further argument on the part of Carrier. The facts are self-evident.

The language used in Rule 52 of the schedule agreement in effect is especially clear and specific as to what pay allowance an employe is entitled to when called by the Company as a witness. Paragraph (c) provides exactly that an employe held away from his home station on rest days will be allowed a minimum of one day at pro rata rate for each day so held. Mr. Guererri was so paid on June 6, 1955 and September 27, 1955.

It is respectfully submitted that the claimant herein was correctly paid on the dates of this claim in accordance with the provisions of Rule 52 of the current agreement and is not entitled to anything additional. The claim should be denied as it is without merit and is unsupported by any rule cited by the Organization in submitting this claim.

The facts presented in this submission were made a matter of discussion with the Committee in conference on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim is for time and one-half pay for attending investigations away from home station on rest days at the request of the Carrier. The Claimant was an observer of the situations under investigation but had not been an active participant.

The Claimant contends that Rule 52 of the Agreement does not govern this situation and that therefore he is entitled to overtime compensation for service performed on a rest day.

Rule 52 is captioned, "Attending Court—Witnesses" and provides, in part, as follows:

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

“(c) In the event an employe is held away from home station on rest days or holidays, he will be allowed a minimum of one day’s pay at pro rata rate for each day so held.”

Claimant contends that the Rule applies only to court proceedings and relies in great part upon the caption and the language “to attend court or appear as witnesses”. Captions do not govern provisions although they may be resorted to in aid of construction. In any event, no such limitation is contained in either the caption or the body of Rule 52 (a).

Precisely the same language as that contained in Rule 52 (a) was the subject of dispute in Award 3966 (Fox) and the same limitation was urged and rejected. It was held that the provision governed both court proceedings and investigations.

It follows that subsection (c) of Rule 52 governs the compensation to be paid for attendance at investigations resulting in being kept from home on rest days. Claimant received the payment so provided for and the Agreement precludes his claim for more.

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 Employe involved in this dispute are respectively Carrier and Employe 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 16th day of May, 1960.