

Award No. 13865
Docket No. SG-13906

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

P. M. Williams, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

FLORIDA EAST COAST RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Florida East Coast Railway Company that:

(a) The Carrier violated the Signalmen's Agreement, as amended, and especially Rule 12, when it disallowed the overtime shown on Daily Report, Form 1168 which W. R. Buckner, Jr. submitted for appearing as a witness in behalf of the Railway, at the direction of Management, in a lawsuit in Circuit Court at Miami, Florida, in which the Carrier was the defendant.

(b) Maintainer W. R. Buckner, Jr., headquartered at Hollywood, Florida, be properly compensated at the punitive rate for the overtime service performed on the following days:

February 8, 1962	4:00 P. M. to 5:30 P. M.
February 19, 1962	4:00 P. M. to 6:30 P. M.
February 26, 1962	4:00 P. M. to 6:25 P. M.
February 27, 1962	4:00 P. M. to 6:35 P. M.
February 28, 1962	4:00 P. M. to 5:45 P. M.
March 1, 1962	4:00 P. M. to 6:35 P. M.

EMPLOYES' STATEMENT OF FACTS: During the months of February and March, 1962, W. R. Buckner, Jr., a Maintainer stationed at Hollywood, Florida, was required by Management to attend pre-trial conferences and court as a witness in behalf of the Railway on six (6) different days, account two lawsuits in Circuit Court at Miami, Florida, in which the Carrier was the defendant.

The first was one referred to as, "the Maria Kelly Case," and Mr. Buckner's appearance was required on February 8 and 19 in that action.

7:00 A. M. on February 19, 26, 27, 28 and March 1, as he is alleged to have done, because all concerned knew that he was to attend court until released from such service. Furthermore, his reporting to the Wire Chief at 7:00 A. M., as he contends was done, was unnecessary because he could not be used for the few minutes between 7:00 A. M. and the time he would be required to leave in order to report in Miami at 8:30 A. M. For that reason, as previously developed, the claimant's position was blanked on the dates of his Court attendance and he was allowed 8 hours at pro rata rate plus necessary personal expenses incurred under Rule 15 of the subject Agreement, all of his service on the dates of claim, except February 8, being exclusively court witness service for the Railway and on February 8 his time after 6 hours being in such witness service.

3. Rule 15 of the Signalmen's Agreement (Item No. 4, Carrier's Statement of Facts) is a special rule negotiated by the parties to deal exclusively with the compensation due employes covered by the schedule Agreement with the Brotherhood of Railroad Signalmen for witness service in connection with attending court, investigations, etc., and embodies the full intentions of the parties in that respect. Under its plain and unambiguous terms, employes taken away from their regularly assigned duties to attend court under instructions from the Railway will be allowed compensation equal to what they would have earned had such interruption not taken place plus necessary actual expenses. The claimant was compensated in accordance with this rule and is due nothing more. Since Rule 15 is a special rule, it takes precedence over and is an exception to any general rule which might be advanced by the Employes in support of their claim, or as stated by the Third Division in Award 6651:

"... It is the general rule in construing of all contracts that a specific provision dealing with a certain condition will prevail over other rules dealing with certain phases of the situation in a general manner and relating to overall matters which may arise. Under the provisions of Article 12 proper compensation was paid and we find no violation of the agreement."

See also Awards 2512, 4496, 4953, 5376, 5894, 6773, 7182 and 10006, among others of the Third Division.

Consequently, since it is manifest that Rule 15 is here controlling and since the claimant was fully compensated in accordance with that rule the claim for additional compensation must be denied, or as stated by the National Railroad Adjustment Board in Award 13981 of the First Division:

"Where, as here, the agreement provides for compensation under certain, stated circumstances it impliedly precludes allowance of compensation under other and different circumstances . . ."

For the reasons stated the claim is without merit and should be denied.

OPINION OF BOARD: Except for the one and one-half hours between 4:00 and 5:30 P. M., February 8, 1962, when he was directed to be in a conference with Carrier's Attorneys, the instant claim embraces the time spent by Claimant in attending court, or in travel incident thereto, for the sole benefit of Carrier.

The agreement contains a rule to cover "Attending Court and Investigation," and it provides as follows:

"RULE 15.

ATTENDING COURT AND INVESTIGATIONS

Employees taken away from their regular duties to attend court, inquests, investigations or hearings, under instructions from the Railway, 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 home station. Employees attending court, inquests, investigations or hearings, under instructions from the Railway, on days off duty will be furnished transportation and will be allowed one day at straight time rate for each such day so held or used, plus necessary actual expenses while away from home station. Fees and mileage accruing will be assigned to the Railway. This rule not to apply to an employee instructed by the Railway to attend investigation under charges against him, and who is not exonerated of such charges. Rule 12 will not apply to travel incident to such matters."

In Award No. 5894 this Division was asked to render a decision on a claim which involved similar facts and rule provisions. We find Award No. 5894 to be correct and to be controlling here; we will follow it by allowing the Petitioner's request for overtime spent by Claimant at the conference called by Carrier's Attorneys on February 8, 1962, and by denying the remaining requests for time spent in, or travel incident to attendance at, court.

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

That the parties waived oral hearing;

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

That Carrier violated the Agreement.

AWARD

Claim sustained in part and denied in part in accordance with above Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1965.