

**Award No. 14124**  
**Docket No. TE-13579**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Don Hamilton, Referee**

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**PARTIES TO DISPUTE:**

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION**  
**(Formerly The Order of Railroad Telegraphers)**

**NORFOLK SOUTHERN RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Norfolk Southern Railway, that:

Mr. G. C. Barker, first shift operator-leverman, Boylan Tower, Raleigh, North Carolina, is entitled to be compensated for five hours and thirty minutes at the rate of time and one-half for services performed from 1:00 P.M. to 6:30 P.M., April 19, 1961 (one of his rest days) after having been ordered by the Carrier to serve as a witness at an investigation held by the Seaboard Air Line Railroad in Raleigh on this date.

**EMPLOYEES' STATEMENT OF FACTS:** The Agreement between the parties, effective August 1, 1937, as amended and supplemented, is available to your Board, and by this reference is made a part hereof.

Operator-Leverman G. C. Barker, at the time cause for this claim arose, was assigned to the rest day relief position at Boylan Tower at Raleigh, North Carolina. On Wednesday, April 19, 1961, one of his assigned rest days, Barker was instructed to appear at a hearing to be held in Raleigh, North Carolina. Barker did appear as a witness at the hearing which commenced at 1:00 P.M. and continued until 6:30 P.M. He submitted a time slip for five hours and thirty minutes at the time and one-half rate, which was not allowed.

Claim was filed and handled in the usual manner up to and including the highest designated officer of the Carrier and has been declined. Correspondence reflecting this handling on the property is attached hereto as ORT Exhibits 1 through 6.

**POSITION OF EMPLOYEES:** The Carrier required Claimant Barker to perform service on his assigned rest day, and has failed and refused to compensate him therefor. He is entitled to be paid under the provisions of Article 7(m), which reads as follows:

The facts in this case are clear and not in dispute. Claimant Barker did perform service for the benefit of the Carrier on his rest day, and is entitled to the compensation claimed.

(Exhibits not reproduced.)

**CARRIER'S STATEMENT OF FACTS:** Mr. G. C. Barker is a joint employe of the Seaboard Air Line Railroad Company, Southern Railway Company and Norfolk Southern Railway Company. He is assigned to duty at Boylan Tower, situated in the City of Raleigh, North Carolina, and performs service for all three railroads. He is paid by Norfolk Southern Railway Company, which, in turn, bills the other two railroads for their portion of his salary. He was ordered by the General Superintendent of Norfolk Southern Railway Company to attend an investigation to be held by the Seaboard Air Line Company on April 19, 1961, to determine the cause of a derailment of a Seaboard train, which occurred on April 8, 1961. This happened to be Mr. Barker's rest day. He attended the hearing, which consumed 5 hours and thirty minutes.

**POSITION OF CARRIER:** Article 14 of the current Agreement reads:

**"ARTICLE 14. WITNESSES**

Employes taken away from their regularly assigned duties at the request of the Company to attend Court or appear as witnesses for the Company will be furnished transportation and will be allowed compensation equal to that which would have been earned had such interruption not taken place, and, in addition, actual expenses incurred for meals and lodging while away from home. Any fees or mileage to be assigned to the Company."

If Mr. Barker had been subpoenaed to attend Court as a witness to testify concerning the affairs of his employer, he would have been compelled to attend as any other citizen. If appearing as a witness resulted in his losing time, he would have been compensated for such loss in accordance with Article 14. The Seaboard investigation was not a judicial proceeding, and did not have the power of subpoena. This investigation, however, was required to be held in accordance with the provisions of the Railway Labor Act. Mr. Barker is a joint employe of the three railroads named, and as such, it is his duty to give any evidence which he may have at any investigation held by these respective lines that relates to the performance of his work or his observations while on duty. Had he lost any time, he would have been compensated for same.

The rule, obviously, does not contemplate that he be paid if the interruption has caused no loss.

**CONCLUSION**

The controlling rule is Article 14, which does not require payment to Mr. Barker, unless he has suffered loss of time. The claim is without support in the Rules, and must be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Carrier ordered Claimant to serve as a witness in an investigation which was conducted on one of the rest days of the

Claimant. Although there exists a short line of authority to the contrary, the overwhelming majority of the cases decided by this Board support the position of the Claimant. We approve of the majority decisions in this area of controversy, and, therefore, sustain the claim.

**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 Employes involved in this dispute are respectively Carrier and Employes 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 Carrier violated the Agreement.

#### **AWARD**

Claim sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of **THIRD DIVISION**

**ATTEST:** S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 26th day of January 1966.