



Award No. 14408
Docket No. CL-15261

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5650) that:

(1) That the Carrier violated our current Agreement when it failed to properly compensate Claimants, who were required to appear at an investigation as witnesses for the Company.

(2) That Mr. G. D. Lindsey and G. S. Manson, Jr., now be properly compensated for all time spent traveling and waiting at the time and one-half rate for services performed outside of their regular daily assignment January 2 and 3, 1964, and proper compensation for traveling and waiting January 4, 1964.

(3) That Mr. R. D. Cooper be properly compensated for all time spent traveling and waiting to attend the investigation January 2, 3 and 4, 1964, in Pine Bluff, Arkansas.

EMPLOYEES' STATEMENT OF FACTS: Mr. G. D. Lindsey is regularly assigned to the position of Relief Clerk No. 2, Texarkana Yard Office, Saturday through Wednesday, rest days Thursday and Friday, and works the following positions:

Saturday	Line Desk	8:00 A. M. to 4:00 P. M.	Rate	\$20.30
Sun.-Mon.	Chief Clerk	4:00 P. M. to 12:00 M. N.	Rate	20.65
Tues.-Wed.	Line Desk	11:00 P. M. to 7:00 A. M.	Rate	20.30

Mr. G. S. Manson, Jr., is regularly assigned to Line Desk position Saturday through Wednesday, with Thursday and Friday as rest days, rate \$20.30, hours 12:00 M. N., to 8:00 A. M.

Mr. R. D. Cooper is an extra clerk and was working as T&E Caller, rate \$17.75, at the time of the incident December 25, 1963.

The Carrier charged Brakeman A. B. Standley with violation of Rule G and cited him for an investigation that was held in Pine Bluff, Arkansas,

at 12:01 A. M. Lindsey was paid 8 hours for Thursday, Friday and Saturday or 3 days at pro rata rate \$20.30 per day. Manson was paid the same and in addition, was later paid for Sunday, January 5th which he lost, or a total of 4 days at pro rata rate \$20.30 per day. Claimant Cooper was an extra man but on January 2nd, was taken off of temporary assignment T&E Caller with rest days Wednesday and Thursday. Cooper lost January 3 and 4 for which he was paid as well as for his rest day Thursday, January 2, or a total of 3 days at pro rata rate of T&E Caller \$17.75 per day. All payments were made in accordance with Rule 38.

The three clerks filed claim for continuous time from time they departed Texarkana until the time they returned. The claims were allegedly based on Rule 36 of the agreement covering travel time. The claims were denied.

The applicable schedule agreement is that reprinted January 1, 1963, copies of which are on file with the Board.

Exhibits 1 to 14, inclusive are attached hereto and made a part hereof.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants, herein, are undertaking to recover compensation under the provisions of Rule 36-1 of the effective Agreement pertaining to employees performing service away from their headquarters which necessitates their traveling.

Carrier contends that the Claimants were called as witnesses in accordance with Rule 38 of the effective Agreement and were compensated under the provisions of that rule which provides:

"RULE 38.

ATTENDING COURT — WITNESSES

38-1. Employees required to attend court or to appear as witnesses for the Carrier will be allowed one day's pay at established basic rate of position last worked for each 24-hour period held, and will be furnished transportation and necessary actual expenses while away from headquarters."

It was urged by Claimants that Rule 38 applies only to a situation where employees are called as witnesses to testify on behalf of the Carrier in a court proceeding.

In Award 6908 — Coffey the following statement appears with which we are in accord:

"The Employees have agreed that when the Carrier requires of them that they appear as witnesses in its behalf, they will claim no compensation over and above what they would have earned in performing their regularly assigned duties. If they find the rule is imposing undue burdens they are not privileged to look to this Board for relief.

We would have been more impressed with the argument that the controlling rule is of special application to court proceedings except for the fact that attendance upon the court is expressly covered in the

rule, and, in the alternative, express provision is made for appearance as a witness."

See also Award 9420 — Bernstein.

It was further urged that as at least two of the Claimants were called as witnesses on their rest days they should have been compensated at the time and one-half rate.

Rule 38 is a special rule which deals with a special subject. If the parties intended that employes called as witnesses on their rest days in court proceedings or investigations should be paid at the time and one-half rate they should have so provided. One day's pay at the established basic rate of the position last worked can only mean at the pro rata rate.

See Award 12408 — Dolnick.

Claimants were correctly compensated in accordance with the provisions of Rule 38.

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

The Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of May 1966.