



Award No. 15663
Docket No. TE-14531

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Thomas J. Kenan, Referee

PARTIES TO DISPUTE:

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

ILLINOIS TERMINAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Illinois Terminal Railroad, that:

1. Carrier violated the Agreement between the parties when it failed and refused to properly compensate E. Blaeuer on October 8, 1962.

2. Carrier shall be required to compensate E. Blaeuer in the amount of a day's pay at the rate of his regular position and for sixty miles traveling at 7 cents per mile.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties effective December 16, 1957, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

At the time cause for this claim arose, Claimant E. Blaeuer was regularly assigned to the position of Agent at Cavender (Gillespie, Illinois), with a daily rate of \$22.0424. He was on authorized leave of absence before and after October 8, 1962. He was notified to be present at Edwardsville, Illinois, on October 8, 1962, to serve as a witness for the Carrier in an investigation. He did appear for the Carrier as a witness in the investigation which began at 8:00 A. M. and ended at 10:20 A. M. on October 8, 1962. He drove his private automobile thirty miles each way. He submitted a time slip for a day's pay plus \$4.20 for mileage. The Superintendent declined the mileage in its entirety, but did offer to pay for two hours and twenty minutes providing Claimant would submit an amended time slip.

The claim was 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 8.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: There was an accident on Carrier's rails at about 9 A. M., September 27, 1962 when a freight train struck a motor car manned by Maintenance of Way Department employes at a point approximately one mile south of Carlinville, Illinois, otherwise known as Davis Siding. An investigation was convened at Edwardsville, Illinois, by Carrier's Superintendent, D. B. Hill, at 8 A. M., October 8, 1962, to investigate the cause of the accident. The investigation was closed at 10:20 A. M., the same date, two hours and twenty minutes from the convening time.

The trick train dispatcher, Mr. Bert Hays, who was on duty at the time of the accident, requested claimant to be at the investigation as a witness for Mr. Hays, since Dispatcher Hays had a telephone conversation with Agent Blaeuer as to whether or not the freight train involved had left Agent Blaeuer's station. Carrier granted Dispatcher Hays' request and had Agent Blaeuer attend the investigation as a witness.

Agent Blaeuer (hereinafter called claimant) was on approved leave of absence with the Carrier (Carrier's Exhibit A, attached hereto) from October 1, 1962 through November 11, 1962 which period of time encompasses the day involved in the instant dispute.

Shortly after returning from leave of absence, claimant submitted a time-slip to Carrier's Superintendent D. B. Hill for four (4) hours' pay for attending the investigation as well as an expense account for \$4.20 to cover automobile mileage allowance of 60 miles at seven (7¢) per mile. This claim was declined by Superintendent Hill's letter of November 30, 1962, attached as Carrier's Exhibit B.

General Chairman Boyce of the Telegraphers' Organization, on January 25, 1963 submitted a new claim to Superintendent Hill requesting claimant be paid eight (8) hours for attending this investigation and, in addition, be allowed automobile mileage of \$4.20. This new claim was likewise declined by Superintendent Hill under date of January 31, 1963 (Carrier's Exhibit C, attached hereto).

Under date of February 8, 1963, General Chairman Boyce appealed claim to Carrier's Supervisor of Personnel Mr. A. E. Mester. As Mr. Mester retired, effective March 1, 1963, his successor Supervisor of Personnel J. W. Horan set a conference to discuss the claim on March 19, 1963 and the claim was declined in writing on March 19, 1963 (Carrier's Exhibit D, attached hereto).

General Chairman Boyce advised Carrier on April 27, 1963 (Carrier's Exhibit E, attached hereto) that Carrier's denial was not acceptable to him and that he was referring the claim to his chief executive for further action.

Nothing further was heard on this matter until Carrier was advised by the National Railroad Adjustment Board, Third Division, by letter dated November 13, 1963 that Organization intended to submit the dispute ex parte to said Board.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant E. Blaeuer, while on leave of absence from his regular assignment, was required by the Carrier to attend an investi-

gation. He drove his own automobile thirty miles to the scene of the investigation, was in attendance during the investigation for two hours and twenty minutes, and returned to his home in his automobile.

The Employees contend the claimant is entitled to a full day's pay (eight hours at his regular rate) plus \$4.20 mileage (sixty miles at seven cents per mile). The Carrier originally offered the claimant two hours and twenty minutes pay at his regular rate but no reimbursement of his expenses. The Carrier now contends it owes the claimant nothing, under the theory that no provision in the Agreement covers this situation involving an employee called from a leave-of-absence status.

This Board is unable to follow the Carrier's argument that it can extract services from an employee in a leave-of-absence status without paying him and without reimbursing him for his expenses necessarily incurred for the benefit of the Carrier. Rule 25(a) provides as follows:

"An employee who is requested or required to attend court, inquest, investigation or similar service shall be compensated for time lost or for time consumed outside his assigned hours in the same amount as if performing service under the rules of the agreement and in addition will be allowed necessary expenses. Any fee or mileage accruing will be assigned to the Carrier."

The claimant was "an employee," as contemplated by Rule 25(a). He was covered by the rule. He was entitled to be compensated at his regular rate "for time consumed outside his assigned hours." Although he had no assigned hours at the time, due to his leave-of-absence condition, the clear intent of Rule 25(a) is to pay an employee for time devoted to the business of the Carrier. The Board holds that the claimant should be allowed his regular rate of pay for the "time consumed" plus "necessary expenses."

The "time consumed" embraces the two hours and twenty minutes of the investigation as well as the claimant's travel time going to and from the investigation. This total amount of time is clearly more than two hours and twenty minutes but less than the eight hours claimed by the Employees. It is most likely close to the four hours originally claimed by the claimant. Whatever was the total amount of time consumed, the parties can readily ascertain it. Should they be unable to ascertain it, the Board allows the claimant one hour and forty minutes for his sixty miles of travel, making the total time consumed four hours.

As for "necessary expenses," the Board finds that the claimed seven cents per mile for sixty miles traveled is a fair evaluation of the claimant's expenses. Expenses in the amount of \$4.20 are allowed.

The Employees' contention, that Rule 3 of the Agreement requires the payment of a full day's pay (eight hours), is rejected. Rule 25(a) clearly limits the Carrier's liability to payment "for time consumed." Rule 25(a)'s phrase "in the same amount as if performing service under the rules of the agreement" is intended only to establish the hourly rate for the "time consumed." This hourly rate could be at an employee's regular rate or his overtime rate, depending upon the circumstances. In the instant dispute, that hourly rate is the claimant's regular rate when he returned from his leave of absence.

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 the Agreement was violated.

AWARD

Claim sustained to the extent set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1967.