

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Central Railroad Company of New Jersey, that:

1. Carrier violated the terms of the parties' Agreement by failing and refusing to pay Mr. Leonard Singer in full for services rendered as witness for Carrier in a hearing held on October 1, 1962 on his rest day.

2. Carrier shall pay Mr. Singer five hours and fifteen minutes for service rendered on October 1, 1962, less the amount already paid.

EMPLOYEES' STATEMENT OF FACTS: The facts in this case are clear and are not in dispute by the parties. Mr. Leonard Singer, claimant, occupied a towerman's position with Monday and Tuesday as his rest days.

Mr. Singer received a telephone call at his home, Bloomsbury, New Jersey, at about 8:30 A. M. on Tuesday, September 18, 1962, from Mr. Clinger, road foreman of engines. Mr. Clinger instructed Mr. Singer to report for a hearing at 11:00 A. M. at Allentown, Pennsylvania on that day to act as a witness for Carrier.

Mr. Singer, in compliance with the instructions given, drove his automobile from Bloomsbury, New Jersey to Allentown, Pennsylvania and returned home after the hearing. The distance in each direction was 29 miles and consumed one hour driving time each way, totaling two hours. The time spent at the hearing consumed one hour and thirty minutes.

Mr. Singer requested payment of the three hours and thirty minutes of his rest day time devoted to Carrier's service at time and one-half rate. Carrier paid Mr. Singer only for the time he spent at the hearing, one and one-half hours, allowing the minimum call payment of "three hours' pay for two hours' work or less."

The Employees claim payment for the three hours and thirty minutes (two hours' travel time and one and one-half hours' hearing time) at time and one-

half rate; a total of five hours and fifteen minutes, against the three hours paid by Carrier. The total amount claimed, therefore, represents two hours and fifteen minutes.

This dispute has been handled in accordance with the requirements of law and rules of procedure of your Board but failed of settlement.

CARRIER'S STATEMENT OF FACTS: Claimant, Signalman Leonard Singer, is regularly assigned to position as Towerman at Phillipsburg, New Jersey. On Tuesday, September 18, 1962, one of his rest days, Mr. Singer was required to attend an investigation as a witness in Allentown, Pennsylvania to determine the facts and fix responsibility for a derailment which occurred on September 14, 1962 within the Interlocking territory over which his Telegraphers' Agreement duties extended and while he was on duty. Without his presence and the presence of other railroad employees involved, the Carrier could not determine the positions of levers and signals and obtain related information essential to the proper conduct of such investigation, which is simply one of many procedures in ordinary railroad operation. The fact that Mr. Singer was not responsible for the accident is irrelevant and does not obviate the necessity for his presence at said investigation, nor does it change the provisions of the rules under which he was compensated.

Article 37(f) of the current schedule Telegraphers' Agreement reads, in part, as follows:

" * * * Employees instructed to attend investigations on their rest days, or on days when not working, or outside of regularly assigned hours to act as witnesses for the Carrier, will be paid on a call basis and in addition will be reimbursed for actual necessary expenses incurred."

Article 27, Notified or Called, of the Agreement, reads as follows:

"Employees notified or called to perform work before their regular starting time, or not continuous with the ending of their regular work period, will be allowed a minimum of three hours' pay for two hours' work or less, and if held on duty in excess of two hours, time and one-half will be allowed on the minute basis."

(Emphasis ours.)

Claimant Singer's presence at the investigation was required for a period of one hour and thirty minutes and, in accordance with the language and intent of Article 27, was allowed a minimum of three hours' pay at the pro rata rate. In addition, he was reimbursed for expenses in operating his automobile from his place of residence in Bloomsbury, N. J. to Allentown, Pennsylvania and return, in the amount of \$4.64 (58 timetable miles at 8 cents per mile).

OPINION OF BOARD: The essential facts involved in this dispute are not in issue. Claimant was required by Carrier to attend a hearing at Allentown, Pennsylvania on his rest day, October 1, 1962. Allentown is 29 miles from his residence in Bloomsbury, New Jersey. He drove his own automobile to Allentown and the round trip consumed two (2) hours in addition to the one hour and thirty minutes (1' 30"), he spent at the hearing. The instant claim concerns whether or not payment is due the Claimant for the two hours time spent

in travel to and from the hearing place as well as the one and one-half (1' 30'') hours spent by him at the hearing.

The parties agree that the applicable provisions of the Agreement are Articles 37(f) and 27 which provides as follows:

"ARTICLE 37.

REPRESENTATION, INVESTIGATIONS OR HEARINGS

(f) So far as practicable investigations will be conducted during the regularly assigned hours of the affected Employees, in which case no deductions in pay will be made. Employees instructed to attend investigations on rest days, or on days when not working, on matters for which they are not held responsible, will be paid on a call basis. Employees instructed to attend investigations on their rest days, or on days when not working, or outside of regularly assigned hours to act as witnesses for the Carrier, will be paid on a call basis and in addition will be reimbursed for actual necessary expenses incurred."

"ARTICLE 27.

NOTIFIED OR CALLED

Employees notified or called to perform work before their regular starting time, or not continuous with the ending of their regular work period, will be allowed a minimum of three hours' pay for two hours' work or less, and if held on duty in excess of two hours, time and one-half will be allowed on the minute basis."

Carrier contends that the controlling rule here is Article 37(f), and that it merely provides pay for attendance at an investigation and reimbursement for actual necessary expenses when instructed to attend investigations on rest days, or on days when not working, or outside of regularly assigned hours.

The parties have cited numerous Awards of this Board, which have been considered carefully together with the applicable language of the controlling Agreement in the present dispute.

The prior Awards relied on by Carrier are readily distinguishable, particularly Award 11177, which involved the attendance of witnesses during their regular working hours, after which they were transported to their respective headquarters.

The Claimant in this case was required to attend a hearing on his rest day and the time consumed, both in travel and at the hearing, was his own time, subject to instructions from his employer to use it on behalf of the employer. Awards 2032 and 3966.

The pertinent language of Article 37(f) required payment on a call basis to employees "instructed to attend investigations" on their rest days as well as necessary expenses incurred. Here, the investigation was held some distance from the residence of Claimant and consumption of time in travel by Claimant was necessary for his actual attendance. Otherwise, he would have been unable "to attend" the investigation as instructed by Carrier. The Call Rule in this case (Article 27) is similar to that found in earlier Awards such as Award 3966.

It provides the formula for payment, as Rule 37(f) specifically states that employees instructed to attend investigations on their rest days will be paid on a call basis.

The Claimant here was called on his rest day to attend an investigation in which he was not involved. Therefore, he was performing service for Carrier, which was compensable under specific language of the Agreement. Implicit in his attendance was consumption of necessary travel time on behalf of the Carrier. We find persuasive prior Awards of this Board, which have held that employees are entitled to compensation for travel time under similar circumstances. Awards 3966 and 6679. Accordingly, we will 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 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 is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of July 1967.