

 Award No. 16778
Docket No. CL-17358

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jan Eric Cartwright, Referee

PARTIES TO DISPUTE:

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

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6347), that:

(1) The Carrier violates and continues to violate the Clerks' Agreement of December 1, 1956, as amended, at Cedartown, Georgia Yard Office in refusing to compensate Yard Clerks R. W. Aiken and J. E. Camp for service performed in attending an investigation held on July 7, 1966 in which they were not involved but appeared as Company witnesses, and that therefore

(2) Yard Clerks R. W. Aiken and J. E. Camp shall now be paid for 8-hours' penalty overtime in the case of R. W. Aiken plus total expenses of \$10.60 for auto mileage and meals, Clerk J. E. Camp shall be paid for 4-hours' 30-minutes' overtime account attending this investigation.

EMPLOYEES' STATEMENT OF FACTS: Under date of June 23, 1966, Superintendent H. L. Bishop, Jr. wrote a letter to Trainman J. R. Shytle, Cedartown, Georgia, requesting his appearance at a formal investigation as outlined therein. Copy of this letter was sent to Yard Clerks R. W. Aiken and J. E. Camp respectively and they were instructed to be present at this investigation as witnesses. Copy of this letter, is hereto attached and identified as Employees' Exhibit No. 1.

June 28, 1966, the investigation was postponed to July 7, 1966 as is evidenced by copy of Mr. Bishop's letter of that date, copy of which is hereto attached and identified as Employees' Exhibit No. 1A and 1B. Again both Clerks R. W. Aiken and J. E. Camp were furnished copy of this letter with instructions to be present at the investigation as witnesses. Neither of these clerks were involved in this investigation except as Carrier witnesses. Both claimed compensation as outlined hereinbefore and the same was denied by Superintendent Bishop under date of July 8, 1966 in a joint letter to Yard Clerks

Rule 43, Attending Court, reads as follows:

"Employees taken away from their regular assigned duties, at the request of the Management, to attend court or to appear as witnesses for 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 reasonable expenses while away from headquarters. Any fee or mileage accruing will be assigned to the Railway."

Inasmuch as neither Rule 43, Attending Court, nor any other rule in the clerks' agreement, supports this baseless claim it has been declined by each and every Carrier representative on the property.

OPINION OF BOARD: Claimants Aiken and Camp were instructed to appear as witnesses on behalf of the Carrier at an investigation. This investigation began at 10:30 A. M., July 7, 1966, and terminated at 5:45 P. M., or shortly thereafter. The entire investigation was conducted at Cedartown, Georgia. The assigned headquarters and work location of both Claimants was also Cedartown, Georgia. Claimant Aiken was on a rest day (July 7) and seeks eight hours (8 hours) reimbursement, at penalty rates on the grounds that the hearing took approximately eight hours (8 hours). Aiken lived a considerable distance from the headquarters "at which point the hearing was held" and also seeks \$10.60 auto mileage and meal allowances. As to Claimant Camp, the hearing was held and his appearance made during his duty time and for a period past such hours. He had finished his tour of duty but continued to attend the hearing. Camp claims four hours and thirty minutes (4 hours, 30 minutes) at penalty rate for such overtime.

Rule 43 of the Agreement provides for compensation and necessary expenses away from headquarters when an employee is requested by the Carrier to attend court or to appear as witnesses for the Railway. Rules 35 and 36, pertain to Overtime and Notification or Call.

The Board has held numerous times that attending an investigation at Carrier's request is "service or work" within the meaning of Agreements. (Awards 3966, 14124, 16173, et al.)

In view of the facts, the Board finds that Claimants Aiken and Camp are entitled to be paid for their overtime in attending the investigation as witnesses for the Carrier as claimed. However, in light of the fact that the investigation was held at both Claimants' headquarters the Board must deny Aiken's claim for auto mileage and meals expense.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employee 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 allowed in part and denied in part as set out in Opinion of Board.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of November 1968.