



Award No. 17164

Docket No. CL-17723

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(SUPPLEMENTAL)

James Robert Jones, Referee

PARTIES TO DISPUTE:

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

ERIE LACKAWANNA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6430) that:

1. Carrier violated the rules of the Clerks' Agreement at Scranton, Pa. Yard Office on October 25, 1966, when it failed to compensate employe F. Quinn for service rendered as a witness at an investigation.
2. Carrier shall now compensate Mr. F. Quinn one day's pay for October 25, 1966 at his regular daily rate. (Claim 1835)

EMPLOYEES' STATEMENT OF FACTS: The claimant, F. Quinn, was regularly assigned to position of Crew Clerk at Scranton, Pa. with assigned hours 12 Midnight to 8 A.M. On Tuesday, October 25, 1966, Carrier was conducting an investigation commencing at 12:30 P.M. involving a train service employe and Mr. Quinn was required to attend this investigation as a witness for the Carrier although he had just completed his tour of duty four and one-half hours earlier at 8 A.M. Carrier refused to compensate employe Quinn for service performed for the Carrier by attending the investigation after being ordered to do so.

On November 15, 1966, the Local Chairman filed claim with General Yardmaster D. H. Decker (Employees' Exhibit A) who denied the claim on November 18, 1966. (Employees' Exhibit B). On November 29, 1966, the Local Chairman notified the General Yardmaster that his decision was not acceptable and would be appealed. (Employees' Exhibit C).

On December 2, 1966, the Division Chairman appealed the claim to Superintendent K. W. Dingle (Employees' Exhibit D) and claim was denied by that Officer on December 6, 1966 (Employees' Exhibit E). On December 9, 1966, the Division Chairman notified the Superintendent that his decision was not acceptable and would be appealed. (Employees' Exhibit F).

On December 16, 1966, the General Chairman progressed the claim to General Manager-Labor Relations R. A. Carroll, the highest officer of the Carrier designated to handle labor disputes. (Employees' Exhibit G). Con-

ference was held on March 8, 1967, however, the parties were unable to resolve the dispute and on May 3, 1967, General Manager Labor Relations Carroll denied the claim. (Employees' Exhibit H).

As the General Chairman did not agree with Carrier's statement that Rule 43 was controlling and Rule 25 was not applicable, he wrote Mr. Carroll again under date of December 18, 1967 (Employees' Exhibit I).

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: On October 16, 1966, Mr. F. Quinn, hereinafter referred to as claimant, was on duty as third trick crew caller, Scranton, Pa. At about 1:00 A.M., he called Fireman E. Shelsky to cover the 2:45 P.M. pusher assignment as engineer. Fireman Shelsky stated he told claimant he would accept the call providing he was paid the earnings of his regular assignment as fireman on Trains No. 2 and 15. After talking to the Road Foreman of Engines, claimant called Fireman Shelsky a second time explaining there were no other available engineers, and he would have to accept the call, but again Shelsky refused. Based upon the incident, Fireman Shelsky and claimant were ordered to appear for investigation on October 25, 1966. The investigation was started at 12:15 P.M. and concluded at 1:15 P.M., copy thereof attached as Carrier's Exhibit A.

On November 15, 1966 (Carrier's Exhibit B), claim was instituted on behalf of claimant for a day's pay on the basis that all rules of the Clerks' Agreement were violated. Claim was denied and thereafter handled on appeal without citing any specific rule until it was appealed to Carrier's highest officer designated to handle such matters when the General Chairman cited Rule 25 as allegedly supporting that claimant was entitled to a day's pay (see Carrier's Exhibit C). Claim was discussed in conference and denied, with denial confirmed by letter dated May 3, 1967 (Carrier's Exhibit D). Under date of December 18, 1967 (Carrier's Exhibit E), the General Chairman admitted that: "* * * Local Chairman O'Malley should have claimed time and one-half for service in excess of eight hours on October 25, 1966 in accordance with the rules agreement. It is unfortunate that Carrier should be permitted to benefit simply because the 'Statement of Claim' as initially filed, cannot be changed." Notwithstanding, on January 19, 1968, the Organization instituted the claim on appeal to this Board. (Exhibits not reproduced.)

OPINION OF BOARD: In this case, Claimant was called to testify as witness on behalf of Carrier at an investigation which took place approximately four hours after Claimant's regular tour of duty. Claimant asks for one day's pay at regular rate for appearing at the hearing.

Two rules are considered in the record—Rules 43 and 25.

This Board will dismiss Rule 43 as inapplicable to this case. Rule 43 concerns cases heard in a Court of Law and Rule 43 applies when an employee is taken away from his regular assigned duties at the request of management. Neither condition is relevant to the instant case.

Rule 25(a) states:

"(a) Employees notified or called to perform work, either before or after, but not continuous with, their regular work period

shall be allowed a minimum of three (3) hours for two (2) hours' work or less and if held on duty in excess of two (2) hours, time and one-half shall be allowed on the minute basis.

The question is whether or not Claimant's appearance at the hearing on Carrier's behalf constitutes work within the construction of Rule 26 (a). Opinions before this Board are divided on this interpretation.

We believe the better view is to consider service for the Carrier the same as work within the meaning of Rule 25(a). Previous decisions of this Board have expounded this point. Although the factual pattern in some of these other cases is not necessarily identical to the instant case, we believe much of the dicta is pertinent and persuasive.

In Award 2032, Referee Shaw said: "The effort to distinguish 'work' and 'service' are entirely vain."

In Award 2223, Referee Fox said: "We think the time has come when we should say that when the employee is not himself involved in a matter being investigated, and he is called by the Carrier, in its own interest, to attend an investigation, he should be paid, whether we call what he does 'work' or 'services' and whether he is called on his rest day or otherwise is not controlling."

Referee Fox in Award 3966 said: "The word 'work' . . . should be construed to mean any character of work or service which the Carrier has the right to require of its employees."

The Carrier had the right to require Claimant to appear at the hearing. Further, Claimant had a practical obligation to comply—otherwise, he could be charged with insubordination.

Claimant was not charged with any violation. His appearance at the investigation was solely as a witness on behalf of Carrier. We cannot consider that there was in fact mutuality of interest as regards Claimant. Therefore, this contention of Carrier is without merit.

Claimant should be compensated for "work" or "service." However, that compensation must be in accordance with the stipulations of Rule 25.

We find that Claimant was only on call for the one hour of the hearing. Therefore, under Rule 25(a) which states: "Employees . . . shall be allowed three hours for two hours work or less . . .", we sustain Claimant's claim but limit his compensation to three hours pay at regular daily rate instead of the one day's pay as prayed for by Claimant.

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.

A W A R D

Claim sustained; compensation reduced to three hours pay at regular rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of May 1969.