

Award No. 18377

Docket No. CL-18627

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY — CAR SERVICE**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6710) that:

(a) Carrier violated rules of the Clerks' Agreement on February 20 and 21, 1967, when it failed to properly compensate Mr. Keith O. Fulton for service performed; and,

(b) Mr. Keith O. Fulton shall now be paid twenty-one (21) hours at the rate of time and one-half his regular rate of \$24.0055 per day as result of this violation.

EMPLOYES' STATEMENT OF FACTS: On the dates here involved, Claimant Keith O. Fulton was the regular assigned occupant of Per Diem-Mileage Clerk Position No. 533 in the Superintendent of Car Service Seniority District, Topeka, Kansas. He was assigned to work 8:00 A. M. to 5:00 P. M. daily, with one hour assigned lunch period, 12:00 noon to 1:00 P. M., Monday through Friday, with Saturday and Sunday assigned rest days. The rate of pay on this position, on the dates here involved, was \$24.0055 per day.

The Carrier, along with the Port Terminal Railroad Inc., at Houston, Texas, was involved in a Law Suit filed by a Mr. J. D. Scott in the District Court of Harris County, Texas. Mr. Scott filed suit against both Carriers as result of an injury sustained while working in or around an A. T. & S. F. Car No. 214238. In the normal course of handling a car movement, record (Form 1324) of Car No. 214238 was prepared and furnished interested parties including Claims Attorneys McLeod, Alexander, Powel and Apffel, attorneys for the A. T. & S. F. Railway Company.

As the suit progressed it became apparent that the original records pertaining to Car A.T. & S.F. 214238 prior to December 19, 1959, which records are retained in the Office of the Superintendent of Car Service, Topeka, Kansas, would be needed for Carrier's support against the suit. The records for the year 1959 had been destroyed and the Claims Attorneys requested

"Service Following Regular Assignment

32-J. Employees who have completed their regular tour of duty and have been released, required to return for further service, may, if the conditions justify, be compensated as if on continuous duty."

* * * * *

"RULE 35 — ATTENDING COURT

Employees attending court or coroner's inquest upon the request of the Company will be furnished transportation and paid for time lost, and, in addition, actual living expenses when away from home station. Fees and mileage accruing for such service will be assigned to the Company."

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was required by Carrier to travel to Houston, Texas to testify at a court hearing involving a suit against Carrier by a J. D. Scott, who was allegedly injured around a freight car belonging to Carrier. Claimant's testimony at the trial was needed in regard to the movement record of the involved freight car, which record Claimant had prepared.

Claimant departed Topeka, Kansas at approximately 5:00 P. M. on February 20, 1967 and arrived Houston, Texas at 10:26 P. M., the same day. After staying overnight at a motel in Houston, Claimant reported the next morning to the courtroom, where the trial was being held; however, at 10:00 A. M. on said date, he was advised by Carrier's attorneys that his testimony was not needed at the court hearing. Claimant returned to Topeka, arriving about 11:00 P. M. on February 21, 1967.

Claimant was allowed eight hours' pay for February 20 and 21 at the rate of his Per Diem-mileage clerk position. However, he is contending that he should have been paid for the time lost commencing with his departure from Topeka, Kansas at around 5:00 P. M. on February 20, 1967 until his return to Topeka, Kansas at 11:00 P. M. on February 21, 1967.

Claimant relies on alleged violations of Rules 26-A, 32-A, 32-I, 32-J and 35. Inasmuch as we are dealing herein with a specific rule, Rule 35, which prevails over general rules such as Rules 26-A, 32-A and 32-J (see Award No. 18143), we are relegated to only considering whether or not there was a rule violation concerning said Rule 35.

Rule 35 reads as follows:

"RULE 35 — ATTENDING COURT

Employees attending court or coroner's inquest upon the request of the Company will be furnished transportation and paid for time lost, and in addition, actual living expenses when away from home station. Fees and mileage accruing for such service will be assigned to the Company."

The Organization has cited, in support of its position, Awards Nos. 3966, 4569 and 4570, involving the same Carrier and the Organization involved herein, and Award 2223 with the Brotherhood of Railroad Signalmen.

The Organization further argues that Claimant was not paid in accordance with Carrier's instructions of 1929, revised in April of 1961 and again on August 12, 1966, and alleges that Item 2 of said instructions provides that employees required to attend Court will be paid actual time with a minimum of 8 hours for time so spent, either before or after and outside of their regular assigned hours on days assigned to work, even though no time may have been lost on their regular assignment.

Carrier's position is that Claimant was paid for all time lost under the requirements of Rule 35 of the Agreement; that Rule 35 being a special rule takes general precedence over general rules 26-A, 32-A and 32-J; that Awards Nos. 2223, 4569 and 4570 cited by petitioner in support of his claim are clearly distinguishable in that Claimants in said Awards were needed as witnesses to attend an investigation and not to attend Court as is involved herein; that Item 2 of Carrier's instructions of 1929, 1961 and 1966 relates solely to instances when actual Court attendance is made by employees outside their regularly assigned working hours, and that condition is not present here inasmuch as Claimant's Court attendance occurred between 9:00 A. M. and 10:30 A. M., February 21, 1967, which was within his regularly assigned working hours of 8:00 A. M. to 5:00 P. M.; that "time" waiting and traveling to attend Court is neither paid for nor contemplated under the Agreement.

The sole issue to be determined herein is whether or not "time lost" in Rule 35 of the Agreement means "work time lost" or whether it also includes travel time and overnight time.

Carrier contends in this instance that "time lost" as referred to in said Rule 35 means "work time lost". We agree with this contention and find that the parties in adopting said Rule 35 intended to and did limit the obligation of the Carrier to the payment of compensation for "work time lost" because of Carrier's requirement that an employee attend Court.

The Organization has cited a number of Awards of this Board, and in said Awards this Board concluded that attendance at an investigation where the employee is not himself being investigated constitutes work time and if such duty is required at times other than on the employee's regular duty hours of his work day, he is entitled to compensation at the rate of pay provided for in the Rules for work so required. However, this claim does not involve such service. The claim confronting us involves travel time and overnight time.

If the parties intended pay for travel time and overnight time, they certainly would have spelled it out as they did in Rule 34 of the Agreement, wherein the manner of payment while waiting or traveling outside of the regular work period in regard to temporary road service away from headquarters is provided for at one-half time rates. No such provision is included in said Rule 35 of the Agreement.

If we were to conclude that said Rule 35 authorizes pay for travel time and overnight time for attendance at Court, as the Organization is claiming

in this dispute, we would be adding to, varying, altering or changing the Agreement, which this Board is not authorized to do.

Therefore, for the aforesaid reasons, we are compelled to deny 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 Employee involved in this dispute are respectively Carrier and Employee 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1971.