

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20830
Docket Number SG-20704

Joseph A. Sickles, Referee

PASTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(The Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway Company (Chesapeake District):

a) Carrier violated the current **Signalmen's** Agreement, particularly **Rule 31**, when on or about October 19, 1972, Claimant was **summoned** to appear in the Goochland Court as a witness for and/or in the behalf of the **C&O** Railway and Carrier later refused to allow compensation and necessary **expenses** in accordance with said agreement.

b) Carrier now allow **Claimant** J. C. Hughes, **C&O** ID No. 2211707, eight (8) hours at the Signalmen's rate of **time** and one-half; hie mileage of 72 miles at nine (9) cents per mile; and \$3.00 for meals; or a total **as follows:**

8 hours @ time and one-half rate ...	\$63.28
72 miles @ .09 cents per mile	6.48
2 meals	3.00
Grand Total	\$72.76

/General Chairman's File: 721230-148 Carrier File: **SG-3247**

OPINION OF BOARD: Claimant was subpoenaed to appear **as** a witness in a law suit brought by the owners of a dog concerning a collision involving one of Carrier's vehicles and said **animal**.

Carrier refused to compensate Claimant in accordance with Rule 31:

"RULE 31 - ATTENDING COURT

Employees taken away from their regular duties at the request of the management to attend court or to appear as witnesses-for the railroad, 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 actual expenses while away from headquarters. Men attending court or appearing as witnesses under this rule **on** days off duty will be allowed one day at time and one-half rate for each **day so** held or used, plus necessary **actual expenses** while away **from** headquarters. **Any** fees or mileage accruing will be assigned to the railroad."

Carrier's denial is based upon the allegation that **it** did not request or require Claimant to appear in court **on** the day in question. Further, Carrier relies upon the fact that Claimant had been on leave for a number of months prior to the court appearance.

The record shows that **Claimant** was on an active vacation status during the time in question. We feel that said factor, plus the general concepts stated in Award 15663 place Claimant in an eligible status. **Thus**, the dispute must be resolved on the issue of whether Carrier requested Claimant's presence **in court**.

There can be no question that the law suit was instituted against the Carrier, as defendant. Carrier states, at Pages 4 and 5 of its **Response** to **Ex Parte** Submission:

'This Carrier is required by law and the **leasing** company to maintain insurance coverage on all vehicles leased. The company with whom the carrier has had **coverage** is the Fidelity and Casualty **Company** of New York. Carrier notes that the Insurance Company is a complete and separate entity, apart and r-ed from this carrier in every respect other than being **its** insurance agent." (underscoring added)

Moreover, at Page 1 of the **same** document, Carrier concedes that Claimant's court appearance was in compliance:

"**to a summons** initiated by the lawyer representative of the Fidelity and Casualty **Company** of New York..."

We do not concur with the Carrier's conclusion as stated at Page 4 of its Rebuttal Submission:

"Attorney Watts was not and is not employed by this Carrier nor has he or does he represent the interest of this Carrier. Attorney Watts was employed by the Fidelity and Casualty Insurance Company to protect the Insurance Company's interest in the case being heard in the **Goochland** County Court on October 19, **1972**. The Insurance Company stood to lose the amount of the claim unless it successfully defended against it. The Carrier, on the other hand, in no way stood to benefit from defense against the claim by Attorney Watts."

We feel that Carrier loses sight of the concepts of the law of agency. It is clear that Attorney Watts corresponded with **Claimant**, **advising** him of the date for court appearance, and that Claimant was **subpoenaed to** appear as a **witness for the defendant** **in** a case captioned "Mary C. Graham **v. C&O Railway Co.**"

(emphasis added). **While** it may well be true that Watts was engaged by the insurance **company**; the Carrier concedes (as cited above) that said **company** is its agent. While it may also be true, as cited above, that the insurance company **stood to lose** the **amount** of the claim unless it successfully defended against it /the suit/ it must also be mentioned that the Carrier paid premiums for insurance coverage.

We do not have before us the precise **terms** of the policy of insurance, but absent any contrary indication of record, we must **presume** that the coverage not only **indemnified** Carrier against money damages, but also provided for legal defense of a suit - which appears to be the fact in the case at issue. The Carrier has paid for both indemnification and legal defense. Thus, action taken by the attorney for the insurance company (while actively defending a suit against Carrier) can only be taken in a representative capacity, and said attorney's act of requiring Claimant's attendance as a witness must be considered as a "request of the management."

Cases **cited by** Carrier are not dispositive of the issue presented in this dispute.

The record, as established on the property, contains a strong suggestion that the insurance company may have paid Claimant for mileage and expenses incurred. Although we sustain the **claim**, if, in fact, **Claimant** has received certain reimbursement from the insurance company concerning his October 19, 1972 court appearance, said reimbursement shall be deducted **from** the amount of the claim, herein.

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.

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Claim sustained to the extent stated in the Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulina
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1975.