

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
CENTRAL OF GEORGIA RAILWAY COMPANY
(M. P. Callaway, Trustee)

STATEMENT OF CLAIM: That T. W. Windham and J. C. McKindree, Signal Maintainer and Assistant Signal Maintainer, respectively, at Paynes, Georgia, be paid amounts listed below for attending investigation Sunday, December 30, 1945, in regard to motor car accident between Signal Maintainer T. W. Windham and Section Foreman Chester Waldrop at Mile Post 210.1, Atlanta District.

T. W. Windham	8 hours at \$1.56	\$12.48
J. C. McKindree	8 hours at 1.23	9.84

JOINT STATEMENT OF FACTS: There is an agreement between the parties, effective July 1, 1921, which contains the following rules:

"14. Calls. (a) Employees released from duty and notified or called to perform work outside of and not continuous with regular working hours, will be paid a minimum allowance of two (2) hours and forty (40) minutes at the overtime rate; if held longer than two (2) hours and forty (40) minutes, they will be paid at the overtime rate computed on the actual minute basis. Time of employees notified or called will begin at the time required to report and end at the time they return to designated point at home station. An employee so called less than two (2) hours and forty (40) minutes before his regular starting time will be paid at time and one-half time until his regular starting time, and thereafter at straight time for the regular hours.

"(b) Employees who are subject to call because of the requirements of the service will notify the operator at their headquarters, or the dispatcher, where they may be found, and will respond promptly when called.

"(c) When such employees desire to absent themselves from headquarters on Sundays or holidays, they will notify the Supervisor of Signals in writing three (3) days in advance of such Sunday or holiday. In case, for any reason the Supervisor of Signals notifies the employee not to absent himself on such Sunday or holiday, the employee will be considered as held on duty and shall be paid for an eight (8) hour day at the overtime rate."

"29. Administration of Discipline. An employee disciplined or one who considers himself unjustly treated, shall have a fair and impartial hearing, provided written request is presented to his immediate superior within ten (10) days of date of advice of

on account of requirements of the service, but to attend an investigation in connection with a motor car accident in which they, themselves, were involved.

The request of the employees to absent themselves from headquarters on Sunday was in connection with service requirements of keeping the signals working and being on hand ready for a call to avoid excessive delays in case of signal failure, due either to weather conditions or heavy traffic, and this has always been understood. Their request to absent themselves cannot be associated with the request to attend an investigation which involved the men in question.

The fact that they were absolved from blame has no bearing on the case as it was not determined until the investigation was completed that no discipline would be applied in connection with the accident.

OPINION OF BOARD: This is a joint submission on an agreed statement of facts.

The question for decision turns on the application of the Call Rule, 14(c), covering employees subject to call, as follows:

"(c) When such employees desire to absent themselves from headquarters on Sundays or holidays, they will notify the Supervisor of Signals in writing three (3) days in advance of such Sunday or holiday. In case, for any reason the Supervisor of Signals notifies the employee not to absent himself on such Sunday or holiday, the employee will be considered as held on duty and shall be paid for an eight (8) hours day at the overtime rate."

Both Claimants had been involved in a motor car accident. Both had given timely notice of their desire to absent themselves from headquarters on Sunday, December 30, in accordance with the rule. However, in spite of such notices, they were ordered to attend an investigation of the accident on that day. They base their claim on the terms of the above rule.

Carrier's position is that Rule 14(c) covers only employees held subject to call because of the requirements of the service, and in this case Claimants were not called on account of requirements of the service, but to attend an investigation in which they, themselves, were involved.

However, to sustain Carrier's position we would have to read into a clear and unambiguous rule an exception which is not there. It appears to us too plain for misunderstanding that "in case, for any reason the Supervisor of Signals notifies the employee not to absent himself on such Sunday or holiday, the employee will be considered as held on duty . . ." means just what it says. (Emphasis added.) It is not subject to construction or refinement.

Whatever may be the reason, if the employee is not permitted to absent himself under the rule, he is considered as held on duty. It should also be noted that the last phrase is not qualified in any way. He is to be considered as held on duty whether or not he performs work or service for the Carrier.

It may not be reasonably contended that an order to attend an investigation, whether the employee was involved in the matter under investigation or not, is anything else but the equivalent of an order not to be absent.

There are a number of Awards of this Division, reviewed in Award 3302, which have held that an employee who is involved in the matter under investigation is not entitled to recover wages as for "work" performed while attending such investigation, under ordinary call, overtime or holiday rules of other agreements. But those Awards are not applicable here in view of the terms of Rule 14(c).

Although the rule under consideration may be unique in comparison to similar rules of other agreements it must be enforced as written.

Accordingly the claim must be sustained.

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 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of April, 1947.