

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

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

**UNION PACIFIC RAILROAD COMPANY (SOUTH-CENTRAL
DISTRICT)**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood that the Carrier violated the Clerks' Agreement:

(1) When on Sunday, October 14, 1945, it required Material Clerk Charles L. Searle, Acoma, Nevada, to report at Caliente, Nevada, as a witness for the Company in connection with investigation regarding a derailment at Minto, Nevada on October 10, 1945, and failed and refused to properly compensate employee Searles for such service he being in no way involved in the derailment, and used solely as a witness for the Carrier.

(2) That Clerk Searle shall now be compensated for 8 hours pay at \$1.52 per hour (which is the overtime rate on monthly rated position at \$206.76 per month) for service rendered as witness on Sunday, October 14, 1945, which service was rendered during the hours Clerk Searle was off duty due to Sunday, October 14, being his regular assigned day of rest.

EMPLOYEES' STATEMENT OF FACTS: Charles L. Searles was the regularly assigned Material Clerk on Extra Gang 549 at Acoma, Nevada, his assignment being 6 days per week, Sunday assigned day of rest. On October 12, 1945 Searles was instructed to report at Caliente on Sunday, October 14, 1945, as a witness in connection with a derailment at Minto, Nevada, on October 10, 1945.

Acoma is a distance of 26 miles from Caliente, and Searles reported at Caliente at 10 A. M. on October 14, as instructed, and was only released in time to return to Acoma at 9 P. M., but only claimed time for 8 hours which was his regular assigned tour of duty. When Searles found he had not been compensated for the day, he submitted claim to Division Chairman, who under date of October 31, 1945 wrote the Division Superintendent. Attached is Exhibit "A".

Under date of November 2, 1945, Division Superintendent replied to Division Chairman. Attached is Exhibit "B".

On November 19, 1945 Division Chairman again wrote Division Supt. Exhibit "C" asking him to reconsider his decision of November 2, but on December 3, 1945, Division Superintendent again declined to allow the claim. Exhibit "D".

(1) The claimant, Charles L. Searle, did not attend the hearing at Caliente on October 14, 1945, at the instance of the company, and in those circumstances, none of the rules or regulations contained in agreement between petitioners and carrier are applicable.

(2) Even though the claimant had attended the hearing to act as a witness for the company, the claim should be denied because Rules 39 and 40 are not applicable. Those rules apply only to **work performed** for the company, and attendance at hearings to act as a witness for the company is not work within the meaning of those rules. Rule 49 governs pay for employes acting as witnesses for the company, and that rule does not call for the payment claimed in the instant case.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a claim by the Brotherhood on behalf of Clerk Charles L. Searle for eight (8) hours' time at the overtime rate for a call to attend an investigation on Sunday, his regularly assigned day of rest. The investigation concerned a matter in which Searle was in no wise involved except as a witness.

The provisions of the Agreement, the Organization contends, was violated by failure to compensate this employe is a part of the Notified or Called Rule, or Rule 39, the pertinent part of which is as follows:

"(a) Except as provided in second paragraph of this rule, employes notified or called to perform work not continuous with, before or after the regular work period or on Sunday and specified Holidays, shall be allowed a minimum of 3 hours for 2 hours work or less, and if held on duty in excess of 2 hours, time and one-half will be allowed on the minute basis.

"(b) Employes who have completed their regular tour of duty and have been released, and required to return for further service may, if the conditions justify, be compensated as if on continuous duty."

The Brotherhood contends that Searle was required by the Carrier to attend the investigation and that thereby he received a call within the meaning of this rule and was entitled to be compensated in accordance with its terms.

The Carrier contends that Searle was not called or required by it to attend the investigation and further that even if it should be found that he was required to attend, still this rule and no other provision of the Agreement requires that the Carrier shall compensate employes covered by the Agreement for time consumed on their rest days in attendance upon investigations on call of the Carrier, hence no compensation may be exacted therefor.

There is no question either that Searle attended the investigation or that if he is entitled to compensation at all he is entitled to it for the time and at the rate set forth in the claim.

The first controversial question is that of whether or not Searle attended at the request of the Carrier. We conclude from the related facts and the reasonable deductions to be drawn therefrom that it has been preponderantly shown that he was there at the instance of the Carrier.

The investigation was held pursuant to the requirements of the Agreement between the parties concerned by request of the employe involved in the investigation. This employe expressed a desire to the representative of the Carrier that Searle should be present. It is clear that he wanted him present because he expected him to disclose information favorable to his cause. Following a disclosure of the desire Searle attended the investigation and with regard to his attendance, V. W. Smith, Superintendent, on December 3, 1945, wrote:

"When it was later decided that the investigation would be held at Caliente, Sunday, October 14th, the Roadmaster advised these men of the time set for the investigation and requested that they be present * * *."

It is clear from the context of the entire letter that when the Superintendent used the words "these men" it was his intention to include Searle.

On January 11, 1946, General Manager F. C. Paulsen wrote, in part:

"When the date of the investigation was set for Sunday, October 14, the Roadmaster and perhaps General Roadmaster did advise Searle of the time set for the investigation and requested that both he and the foreman be present."

The "he" referred to in the quotation was Searle.

These statements coupled with other less convincing statements in the record, and coupled further with an assumption that the Carrier desired to develop all of the facts and the true facts incident to a wreck upon its property, we think, as was stated before, that it has been preponderantly shown that Searle attended the investigation at the request of the Carrier.

Having arrived at this conclusion, it becomes necessary to say whether or not it was a violation of the Agreement to refuse to compensate Searle in accordance with the demand of the claim. We think it was. We have arrived at the same conclusion in this respect as was reached in Award 3911, and for the reasons set out in the Opinion therein which we think need not be repeated here.

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 employes 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 claim has been sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of May, 1948.