

Award No. 4496

Docket No. CL-4454

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Mr. Pete Anderson, Yard Clerk at Elko, Nevada, be paid 3½ hours at rate of time and one-half account required to appear as a witness on behalf of the Railroad in connection with investigation held with Conductor J. C. Steward on Sunday, September 28, 1946.

EMPLOYEES' STATEMENT OF FACTS: On Sunday, September 28, 1946, Pete Anderson was regularly assigned as Yard Clerk at Elko, Nevada with assigned hours of 12:00 midnight to 8:00 A. M. On that date he was required to appear as a witness on the behalf of the Railroad, being held from 2:00 P. M. to 5:30 P. M. at total of 3½ hours.

POSITION OF EMPLOYEES: The following rules are cited from Agreement bearing effective date of December 16, 1943:

RULE 20. "Except where changing assignments in the exercise of seniority rights, or where furloughed employees are used on more than one shift, time in excess of 8 hours, exclusive of the meal period, in any 24-hour period, shall be considered overtime and paid on the actual minute basis at the rate of time and one-half.

Employees shall not be required to suspend work during regular hours to absorb overtime.

In working overtime before or after assigned hours, employees regularly assigned to class of work for which overtime is necessary shall be given preference. In working overtime on Sundays and holidays, the same principle shall apply."

RULE 21. "Employees notified or called to perform work not continuous with, before, or after the regular work period or on Sundays and specified holidays shall be allowed a minimum of 3 hours' pay for 2 hours' work or less and if held on duty in excess of 2 hours, time and one-half shall be allowed on the minute basis.

Employees who, prior to the completion of their regular tour of duty, are notified to return for further service may be compensated as if on continuous duty.

Employees who have completed their regular tour of duty and have been released, called to return for further service shall be paid in accordance with the first paragraph of this rule."

of Railway Clerks, representing Clerks on the Western Pacific Railroad, and Assistant to General Manager H. R. Fegley, representing the Management of The Western Pacific Railroad Company, in connection with

Case No. 2925-1947-Clks.

Claim of the System Committee of the Brotherhood of Railway Clerks that Pete Anderson, Yard Clerk at Elko, Nevada, be paid for 3½ hours at rate of time and one-half account required to appear as a witness on behalf of the Railroad in connection with investigation held with Conductor J. C. Stewart on Sunday, September 28, 1946.

DECISION: The employe in this case was required to attend a railroad investigation as a witness, and was not required to act as a witness within the provisions of Rule 25, 'Attending Court.' Our opinion that the Schedule does not require payment except when an employe is prevented from performing service is sustained by Award No. 3343, National Railroad Adjustment Board Third Division.

Claim is declined.

Yours truly,

(s) H. R. Fegley

Assistant to General Manager"

cc: GWC, JJD, WJO.

In the operation of the Railroad, the Carrier is entitled to have all information in connection with irregularities, and it is the duty of employes to give as much time as required outside of their regular tours of duty to accomplish this purpose. Anderson had pertinent knowledge in connection with the circumstances of the conductor's case and it was necessary and incumbent upon him to be present at the investigation. In Carrier's opinion he is not entitled to any compensation therefor, and feels that its position is in harmony with your award No. 3089, Docket No. CH-3064.

Exhibits not reproduced.

OPINION OF BOARD: On Sunday, September 28, 1946, claimant occupied the position of Yard Clerk at Elko, Nevada, assigned hours 12:00 Midnight to 8:00 A. M. On that date he was required to appear as a witness on behalf of the Carrier at an investigation in which claimant was neither involved nor interested. He was required to remain in attendance from 2:00 P. M. to 5:30 P. M. The Organization contends that claimant should be compensated at the time and one-half rate under the Overtime and Call Rules. The Carrier denies the validity of the claim but contends that if a violation of the Agreement is found to exist, claimant should be compensated under Rule 25, current Agreement, providing:

"Employes taken away from their regular assigned duties, at the request of the Railroad, 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. In the event employe is held away from home terminal on Sundays and/or holidays he will be allowed a minimum of one day's pay for each day so held. Employes attending court or acting as witnesses at home point or headquarters outside of their assigned hours will be paid at pro rata rate for the time devoted to such attendance. Any fee or mileage accruing will be assigned to the Railroad."

The claim is clearly sustainable by the language in Rule 25 stating: "Employes attending court or acting as witnesses at home point or headquarters outside of their assigned hours will be paid at pro rata rate for

the time devoted to such attendance." The present claim falls squarely within this provision. The claim will therefore be allowed at the pro rata rate provided therein.

The Organization asserts that the claim is payable under the Overtime and Call Rules. With this we cannot agree. Whatever the rule may be when the Overtime and Call Rules stand alone, Rule 25 is the controlling rule under the present agreement. The Overtime and Call Rules are general rules dealing in general with the subjects they purport to cover. Rule 25 is a specific rule dealing with a special subject. It is a general rule of contract construction that special rules prevail over general rules, leaving the latter to operate in the field not covered by the former. We are obliged to say, therefore, that the Overtime and Call Rules do not control the situation here presented.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 violated.

AWARD

Claim sustained at pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 29th day of July, 1949.