

Award No. 6156
Docket No. CL-6300

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Mortimer Stone, Referee

Interpretation

Serial No. 148

PARTIES TO DISPUTE:

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

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Carrier violated the procedural provisions of our Agreement (particularly Rule 14) when it did not afford Mr. A. N. Hudson, Usher (Red Cap), an investigation within five days of the date held from duty, and further violated particularly Rule 15 of said Agreement when it failed to comply with the request of Mr. Hudson's representative for hearing before the official to whom the case was appealed.

(b) On the merits of the case Usher Hudson was unjustly dismissed from service.

(c) Mr. Hudson be reinstated with seniority unimpaired and paid for earnings lost subsequent to August 28, 1951, to date restored to service in accordance with the stipulations of Rule 17 of our Agreement.

OPINION OF BOARD: Based upon the particular facts and circumstances in this case, the claims will 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 the Carrier violated the Agreement in this particular case.

AWARD

Claims sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 27th day of March, 1953.

Interpretation

Serial No. 148

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 6156,
DOCKET NO. CL-6300

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

NAME OF CARRIER: Kansas City Terminal Railway Company.

Upon application of the representatives of the employees involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Sec. 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

Insofar as involved in this interpretation paragraph (c) of the claim presented was that Usher Hudson be paid "in accordance with the stipulation of Rule 17 of our Agreement". That claim was sustained by the Award. Rule 17 provided that he should be "paid for all time lost at the average amount per day earned by him during the last previous semi-monthly period, less amount earned elsewhere during suspension or dismissal".

Subsequent to the Award, Claimant Hudson submitted to the Carrier statements from his employers during his suspension, as stated in the application for interpretation, "showing total earnings with them of \$4,994.93 inclusive of the amount of \$1,222.90 in overtime pay with one company."

The specific question submitted for interpretation is:

"Shall the amount of \$1,222.90, earned by Hudson as overtime pay, while out of the service, be charged against Hudson and to the credit of the Carrier in computing the amount due under paragraph (c) of the Award?"

Interpretation No. 1 to Award 3113 is cited as precedent for holding that the Carrier is precluded from claiming offset of overtime earnings now for the reason that no such claim was made in the record. Apparently the Board considered Carrier's request for interpretation of Award 3113 to be in fact a request for modification, by offset of earnings, not allowed by the Award. Here the question presented by the Employees is that of whether award by the meaning of its own words does provide for offset of overtime. If offset of overtime is implicit in the Rule relied on, it need not be specifically requested.

In seeking to answer the question for interpretation we are not required to construe provisions for monetary loss, wage loss or time loss as are involved in several cited awards. We are bound by the specific provisions of Rule 17 in determining the amount to be paid. As said in Interpretation No. 1 to Award 6087, Rule 17 "amounts to an agreement upon liquidated damages". Thereby it is agreed that settlement shall be made not on the basis of actual wage, time or monetary loss, which might be difficult or impossible of determination, but on the basis of the formula set out in the Rule. That requires

Referee Thomas C. Begley, who sat with the Division as a Member when Award 6179 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 26th day of February, 1954.