

Award No. 6374

Docket No. SG-6432

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Emmett Ferguson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Missouri Pacific Railroad:

(1) That the agreement was violated when the Carrier declined to compensate Signal Foreman W. D. Carpenter sixteen and one-half hours at the punitive rate he claimed for his services rendered to the Carrier when he was required to report at Osawatomie, Kansas, on his rest day, Sunday, February 26, 1950, to furnish Carrier with a deposition.

(2) That Signal Foreman W. D. Carpenter be compensated for sixteen and one-half hours at his then applicable punitive rate for the service he rendered, as cited above, less any amount he has been paid for this service.

EMPLOYEES' STATEMENT OF FACTS: The claimant, Signal Foreman W. D. Carpenter, of Gang No. 25, was a monthly-rated employe, with Sundays as his regularly assigned rest day; when the incident leading up to this claim occurred.

In complying with the Carrier's instructions, the claimant left Coffeyville, Kansas, at 1:30 A.M., on his rest day, Sunday, February 26, 1950, for the purpose of providing the Carrier with a deposition, which was executed at Osawatomie, Kansas.

The claimant returned to Coffeyville the same day, arriving at 6:00 P.M.

The elapsed time in complying with the Carrier's instructions consumed sixteen and one-half hours outside of the claimant's regularly assigned tour of duty, specifically the service rendered was on one of the claimant's rest days.

parently he is considering all of the time involved as "work" to which Rule 4 (a) is applicable. The Carrier does not agree that traveling and waiting time is ever considered as work under this Agreement. Certainly there is no provision anywhere in the Agreement for punitive pay for traveling and waiting—not even when it occurs outside regular hours. If traveling and waiting were synonymous with work, what would be the point of making a distinction between them in the Agreement?

The Local Chairman mentioned Rule 3, Section 2 (r-1), which covers traveling and waiting, in his letter of March 15, 1950 to his General Chairman which is a part of Exhibit "B". This rule provides for pro rata payment for traveling and waiting between the end of regular hours one day and beginning of regular hours the following day, but that rule does not apply to court attendance for which there is a special rule. That the court attendance rule contemplates employees leaving headquarters to act as witnesses is evidenced by the following sentence which appears therein:

"Actual expenses will be allowed while away from home station or headquarters."

Nowhere in the rule is there a provision for allowance of traveling and waiting time in connection with court attendance away from home station. It is obvious the rule provides for a pro rata day's pay and expenses, but nothing more, for court attendance by any employee under the agreement.

The Local Chairman also mentioned Rule 3, Section 2 (m) which is the call rule. This rule applies only to work. If work and court attendance were synonymous there would be no point in having a court attendance rule. Like Rule 4 (a) this call rule is a general rule; it is superseded by the special rule covering court attendance.

The other rule cited by the Local Chairman is 4 (b) which merely says that for service on rest days when not due to be relieved by relief men employees will be paid under the call rule. We have discussed the call rule in the next preceding paragraph. Rule 4 (b) is also a general rule; it does not apply to court attendance either.

It is the position of the Carrier that rules cited other than 12 (b-1) and 13 are general rules applying to work, and traveling and waiting in connection with work, and do not apply to court attendance for which there is a special rule that provides a pro rata day and expenses as the full measure of compensation. The claimant has been so compensated. There is no agreement basis for the additional payment claimed.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts of this case are agreed. Mr. W. D. Carpenter a signal foreman on a monthly rate of pay consumed either 16 or 16½ hours on Sunday, February 26, 1950 when he traveled away from his home to give a deposition.

The Company paid Mr. Carpenter 8 hours by applying Rule 13 which follows:

"Employees attending court, inquests, investigations or hearings as a witness, under instructions from the railroad company, will be paid compensation equal to what they would have earned on their regular assignment and hourly rated men, if so used on days off duty will be allowed eight (8) hours' pay at straight time rate for each day so used. Actual expenses will be allowed while away from home station or headquarters. Any fees or mileage accruing for such services will be assigned to the railroad company."

The Brotherhood challenges this action and argues that giving a deposition does not come within the meaning of Rule 13.

We are of the opinion that under the present facts the claimant was actually attending a hearing where his deposition was taken. Such a situation is covered by the specific rule and not by general rules concerning rest days, or call rules. Accordingly the claimant's pay was properly computed in the instant case.

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 Rule 13 specifically applies to the present facts thereby excluding application of other rules more general in terms.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 19th day of October, 1953.