

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

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

THE BALTIMORE AND OHIO RAILROAD COMPANY

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

1. When it required Yard Clerk Russell W. Darner, Lima, Ohio, to leave Lima at 6:40 A. M. on February 22, 1952, and report to the Trainmaster's Office at Dayton, Ohio, at 9:30 A. M. on that date to attend investigation in which he was not involved or interested, and failed and refused to compensate him in accordance with provisions of overtime rules, and

2. That Yard Clerk Russell W. Darner shall be compensated for the difference between amount received for eight hours at time and one-half and the amount he should have received for a total of 18 hours 30 minutes at the penalty rate.

JOINT STATEMENT OF FACTS: Yard Clerk R. W. Darner was regularly assigned at Lima, Ohio, hours 3:00 P. M. to 11:00 P. M. On February 19, 1952, the Trainmaster at Dayton, Ohio, instructed Mr. Darner to report to his office at 9:30 A. M., February 22 to give testimony as a witness in the case of an employe charged with a violation of the Carrier's operating rules. Yard Clerk Darner was offered and accepted a ride to Dayton by General Yardmaster Campbell. They left Lima at 6:40 A. M. on February 22 and arrived at Dayton at 9:00 A. M. Mr. Darner was released from the investigation at 11:10 P. M. that night and returned to Lima with Mr. Campbell, arriving at 1:10 A. M., February 23. For his service Mr. Darner was allowed eight hours at the punitive rate of pay.

Had Mr. Darner not attended the investigation at Dayton, his assignment would have required him to work at Lima on February 22.

This dispute has been handled in accordance with the provisions of the Railway Labor Act, as amended. No agreement on a settlement thereof having been reached between the parties, it is hereby submitted to the National Railroad Adjustment Board for decision.

POSITION OF EMPLOYEES: There is in effect between the parties an Agreement bearing effective date of July 1, 1921, with subsequent revisions, which contains the following rules which are quoted in whole or in part:

OPINION OF BOARD: This dispute comes to the Board by joint submission which shows that the parties are in agreement on the controlling facts.

We find and hold that Claimant, at the time in question, was a witness within the meaning of Rule 50 (a). He was paid what he would have earned had he worked at his regularly assigned duties on the day in question and while more time was consumed in the role of a witness than would have been devoted to his regularly assigned position, it is nevertheless true that he performed no service for which the other pay rules of the Agreement, including those relied on by Petitioner, were designed.

The Employees have agreed that when the Carrier requires of them that they appear as witnesses in its behalf, they will claim no compensation over and above what they would have earned in performing their regularly assigned duties. If they find the rule is imposing undue burdens they are not privileged to look to this Board for relief.

We would have been more impressed with the argument that the controlling rule is of special application to court proceedings except for the fact that attendance upon the court is expressly covered in the rule, and, in the alternative, express provision is made for appearance as a witness. It is also persuasive that investigations for alleged rules violations conducted on the property have come to have many of the attributes of an adversary proceedings (at no little insistence by the Employees) which call for appearances to be made by witnesses. (See Rule 47). In the record of these investigations, brought to this Board on appeal, it is not unusual to find the Employees referring to Carrier witnesses.

We must interpret these rules in keeping with their general acceptance on the property and here we have a concrete example of a Claimant asserting a demand to be compensated for attendance upon an investigation as a witness at the Carrier's direction. His only complaint is that he has not been paid enough. There is no merit to the claim.

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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 18th day of February, 1955.