

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

THE BALTIMORE AND OHIO RAILROAD COMPANY

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

(1) Carrier violated the Agreement between the parties when it compensated Relief Clerk John F. Clark for eight hours at the straight time rate for services rendered by him on his designated rest day, Friday, February 1, 1952, instead of compensating him for 11 hours and 30 minutes at the rate of time and one-half, account of being required to leave Cincinnati, Ohio, at 9:30 A. M. in order to report at the Road Foreman's Office at Dayton, Ohio, at 1:00 P. M. on that date to attend an investigation in which he was not involved or interested, arriving back in Cincinnati at 9:00 P. M., and

(2) That Relief Clerk John F. Clark shall now be compensated for the difference between the amount received for eight hours at the pro rata rate and the amount he should have received for services rendered of a total of 11 hours and 30 minutes at the rate of time and one-half.

JOINT STATEMENT OF FACTS: John F. Clark was regularly assigned to a relief position at Ivorydale, Ohio, scheduled to relieve the Chief Caller, rate \$13.95, on Saturday and Callers, rate \$12.63, from Sunday through Wednesday, with Thursday and Friday as rest days. On January 31, 1952, Mr. Clark received notice instructing him to report at the Road Foreman's Office at Dayton, Ohio, at 1:00 P. M. on Friday, February 1, as a witness in the case of an employee charged with refusing to accept a call on January 26. Mr. Clark left Cincinnati on Train 356 at 9:30 A. M., February 1st, and returned to Cincinnati on Train 53 at 9:00 P. M. on that same date. For his service he was allowed one day at the Chief Caller's straight time rate, \$13.95.

There is an Agreement between the parties, effective July 1, 1921, with subsequent revisions, which by reference is made a part of this Statement of Facts.

POSITION OF EMPLOYES: There is in evidence an Agreement between the parties from which the following rules are quoted in whole or in part for ready reference:

"RULE 4—Overtime

"(f-1) Service rendered by an employee on his designated rest day or days other than Sundays shall be paid for under the provisions

"(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."

The facts in Award 6374 were that the claimant, a Signal Foreman, was instructed to report to the Carrier's Claim Agent at Osawatomie, Kansas, at 9:00 A. M., Sunday, February 26, 1950, to give a deposition in connection with a law suit filed against the Carrier. The Claimant left his headquarters at Coffeyville, Kansas, at 2:00 A. M. that date and arrived at Osawatomie at 5:40 A. M. He was relieved at Osawatomie at 6:00 P. M. that same date. Claim there was made for sixteen and one-half hours at punitive rate from 1:30 A. M. to 6:00 P. M., a total of sixteen and one-half hours.

In the agreement between the parties to Award 6374 there was a rule captioned "Courts and Inquests" which read in full as 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 claim in Award 6374 was denied. The "Opinion of Board" in Award 6374 reads in part as follows:

"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."

It was further held in the Findings to this Award:

"That Rule 13 (Courts and Inquests) specifically applies to the present facts thereby excluding application of other rules more general in terms."

The Carrier asserts that in the instant case the Claimant was properly compensated in accordance with the applicable rule. The Carrier submits that the instant claim is wholly without merit and petitions the Division to so hold.

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.

(Exhibits not reproduced)

OPINION OF BOARD: Claimant was required by the Carrier to appear as a witness at an investigation into charges against another employee. Rule 50 governs compensation for attending court or appearing as witnesses for the railroad. While petitioner contends that the language of the rule does not precisely cover the particular situation involved here, it is obvious that the parties intended the rule to cover all situations. Paragraph (a) provides for compensation equal to what would have been earned when employees are taken away from their regularly assigned duties and paragraph (b) provides for a day's pay when held away from home terminal on rest days or holidays. Should we say that the latter does not apply to one taken from home terminal on a rest day? We think not. There is no real distinction between the two

actions and each is equally onerous. Moreover, there is no other rule applicable because as we said in Award 6908 (same parties), the claimant performed no service for which the other pay rules of the agreement were designed.

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

The agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of July, 1955.