Award No. 8101
Docket No. SG-7706

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America that:

Signal Maintainer J. H. Austin and Signal Helper C. F. Ray at Fairmount, Georgia, be paid eight (8) hours and thirty (30) minutes at the rate of time and one-half, and actual expenses incurred, for attending an investigation at Etowah, Tennessee, on July 31, 1953.

EMPLOYES' STATEMENT OF FACTS: Signal Maintainer J. H. Austin and Signal Helper C. F. Ray are located at Fairmount, Georgia, with regularly assigned working hours from 7:30 A. M. to 4:00 P. M., 30-minute lunch period.

Claimants were instructed by District Engineer J. E. Lockhart to report at Etowah, Tennessee, at 5:00 P. M. on July 31, 1953, to attend an investigation being held at that point in connection with an accident involving a motor car being struck by a train on July 15, 1953, between Ranger and Fairmount, Georgia. They left Fairmount, Georgia, about 3:00 P. M., arrived at Etowah, Tennessee, about 4:40 P. M., and were held in the investigation by the management until 10:40 P. M., arriving back at Fairmount, Georgia, at 12:30 A. M. on August 1, 1953.

Under date of August 3, 1953, Signal Maintainer J. H. Austin made claim for overtime and expenses to Signal Supervisor A. C. Atchison as follows:

> "Attached hereto time sheets and expense forms for my helper and myself for being called away from home station and territory to attend investigation which was held July 31, 1953 at Etowah, Tenn. between train crew on No. 8 and myself as a result of hitting my motor car on July 15, 1953, 10:42 A. M. 2700 feet north of mile Post C-402."

No reply was made by Signal Supervisor A. C. Atchison and under date of August 29, 1953, J. H. Austin again directed a letter to Mr. Atchison as follows:

> "Signal helper C. F. Ray, and myself have not yet received pay for the time of Eight hours and thirty minutes attending the investigation at Etowah, Tenn. July 31, 1953.

This board has in the past consistently held that overtime rate of pay is not due unless actual work is performed and your attention is respectfully called to the following excerpt from:

AWARD 6013

"We conclude, under the evidence adduced, * * * the principle announced being that employes who do not work should not receive overtime rates of pay, seems applicable here."

AWARD 3193

"The overtime rule clearly means that work performed in excess of eight hours will be considered overtime. Consequently, time not actually worked cannot be treated as overtime rate unless the agreement specifically so provides. This conclusion is supported by this Division Awards 2346, 2695, 2823 and 3049."

AWARD 6241

"Since these periods of time were not actually worked claimants are not entitled to reparation at the punitive or overtime rate."

These cited opinions contemplate **work performed.** In the instant case, the claimant did not perform any work.

Should an equitable basis perchance be considered for compensation at time and one-half for traveling in connection with attendance at investigations, it is of a negotiable character and the claimants would only be seeking to secure what was not gained through negotiations on this property.

The carrier submits that in view of all the circumstances, claim should not be sustained.

OPINION OF BOARD: Claimants were instructed by Carrier to attend an investigation in connection with a collision between a train and a motor car, Claimant Austin as the employe charged with responsibility for the accident and Claimant Ray as a witness. The investigation was held at Etowah, Tennessee on July 31, 1953 and Claimants, who were located at Fairmount, Georgia—working hours 7:30 A. M. to 4:00 P. M., were required to leave Fairmount at 3:00 P. M. and did not arrive back at Fairmount until 12:30 A. M. on August 1. The claim is for 8½ hours at time and one-half and actual expenses incurred for each Claimant, for attending the investigation.

The claim is not before the Board on its merits but rests entirely upon the alleged failure of Carrier to comply with the procedural requirements of Rule 54(b) of the Agreement, which provides:

"Decisions on claims shall be rendered, in writing, by subordinate officers stating the reason for non-allowance, within thirty (30) days from the date such claim is served, or within thirty (30) days from conclusion of conference if one is held thereon. If a decision is not rendered within this time limit, the claim shall be allowed."

It is conceded that no decision was rendered within the specified thirty day period after the claims were filed. Carrier contends, however, that Rule 54(b) is not applicable to this claim because of the language of Rule 54(a). Rule 54 is entitled TIME LIMITS FOR HANDLING CLAIMS and the applicable part of paragraph (a) provides as follows:

"All claims and grievances, other than discipline cases referred to in Rule 55, not presented to the Signal Supervisor, in writing, within 90 days from the date the employe received his pay check for the pay period involved, are barred. . . ."

Carrier argues that the claims here involved are "discipline cases referred to in Rule 55" and thus are excepted from Rule 54 by paragraph (a) cited above. We do not think that this contention finds support in an examination of the two rules. While it is true, as Carrier asserts, that the claims arise from the holding of an investigation as provided for in Rule 55, this does not in our opinion make them "discipline cases" under that rule. Rule 54 is concerned with establishing time limits for the handling of claims and grievances generally. It excepts from these time limits discipline cases under Rule 55, which provides different time limits applicable to the specific procedures in those cases, e.g. decision must be rendered within 10 days after completion of investigation, intermediate appeals from this decision must be filed within 15 days. Under Rule 54, intermediate appeals can be filed within 30 days.

Rule 55, however, contains no provision concerning payment or non-payment for time spent at investigations and provides no special time limits or other procedures with regard to claims for such payment. The provision in 55(a) that an employe shall be paid for time lost if the charge against him is not sustained, does not cover the problem of time spent at investigations raised in this case. Since the procedures established by Rule 55 do not cover the instant claim, the exception in Rule 54(a) is not applicable to it and the claim is subject to the time limit in 54(b). Since 54(b) specifically states that a claim shall be allowed if no decision is rendered within 30 days, we find no merit in Carrier's second contention that the claim should be denied because the Director of Personnel was not timely notified that his decision was unacceptable as required by 54(d). Assuming without deciding that this is factually correct, since it has been established that the 30 day limit applies to this claim and that no decision was rendered within that time, the claim must be regarded as allowed at the expiration of the time limit. Claimants have consistently taken that position and subsequent handling on the property did not change the clear intent of the rule to allow claims after thirty days if no decision is rendered.

We make no finding on the merits of the claim but sustain it on the procedural grounds set forth in the Opinion.

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 Employes involved in this dispute are respectively Carrier and Employes 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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 11th day of October, 1957.

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The majority correctly recognizes that the investigation involved in this case was in connection with a collision between a train and a motor car, and

that one of the claimants was charged with responsibility therefor. The record shows that the employe charged was found guilty and assessed a recorded suspension of 30 days.

Accordingly this is a discipline case referred to in Rule 55. The majority erred in applying Rule 54 hereto because paragraph (a) thereof specifically excepts "discipline cases referred to in Rule 55".

For the foregoing reason we dissent.

/s/ **W. H. Castle**
/s/ **J. F. Mullen**
/s/ **J. E. Kemp**
/s/ **C. P. Dugan**
/s/ **R. M. Butler**