

Award No. 10218

Docket No. TE-9142

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Robert J. Wilson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Colorado & Santa Fe Railway, that:

1. The Carrier violated the Agreement between the parties when it ordered W. L. McLendon and J. E. Greer to be present at an investigation held in Lometa, Texas, July 9, 1955, and thereafter refused and continues to refuse to compensate them in accordance with the terms of said agreement; and

2. The Carrier shall now be required to compensate W. L. McLendon in the amount of \$42.02, and J. E. Greer in the amount of \$34.53.

EMPLOYES' STATEMENT OF FACTS: An Agreement between the parties, bearing effective date of June 1, 1951, is in evidence.

Under date of June 22, 1955, Carrier's Trainmaster Mr. E. E. Baker addressed the following letter to Claimants Greer and McLendon:

"This is to notify you formal investigation of the responsibility of Conductor A. Bradshaw, and to develop the facts, in connection with his apparent violation of Rule G, Rules of the Operating Department, at Eden, afternoon and night of June 2, 1955, and his apparent violation of Rules G, 105, 752, 752(A), 752(B), and 954, Rules of the Operating Department, while he was on duty as conductor on Train No. 54 from Eden to Brady, June 3, 1955, will be held in Agent's Office, Lometa, 9:00 A. M., Saturday, July 9th, 1955.

Please arrange to be present at the time, date and place mentioned as a witness only.

Your attendance is at the request of Conductor Bradshaw and it is to be understood there will be no payment by the Railway Company for time lost or expenses as a result of attending this investigation.

All that is contained herein is either known or available to the Employees and their representatives.

OPINION OF BOARD: Claimant McLendon on July 9, 1955 was qualifying in Tower Position 147 at Temple, Texas. Claimant Greer on same date was a regularly assigned telegrapher at Eden, Texas.

On June 22, 1955 E. E. Baker, Trainmaster of Carrier located at Temple, Texas, wrote a letter to both Claimants which read in part as follows:

"Please arrange to be present at the time, date and place mentioned as a witness only.

"Your attendance is at the request of Conductor Bradshaw and it is to be understood there will be no payment by railway company for time lost or expenses incurred as a result of attending this investigation.

"Promptly upon receipt of this notice arrange to notify Trainmaster A. N. Wade at Brownwood and Superintendent Clements and this office at Temple if you are agreeable to attending the investigation and if necessary will arrange to relieve you."

The record shows that both Claimants protested to the Carrier and Claimant Greer wrote a letter to Trainmaster Baker as follows:

"Your letter June 22 above subject relative investigation Lometa July 9.

"It is not agreeable to attend this investigation. I gave Mr. Wade a statement of exactly ALL I KNOW ABOUT IT which was as follows:

"Bradshaw came on duty Morning of June 3 signed up the 830 took switch list and orders — I did not notice anything unusual about his appearance and if drinking I did not notice it.

"If necessary I can make affidavit to the above statement. No use to drive 200 miles just to say it over."

Trainmaster Baker then wrote the following letter to both Claimants.

"As I advised you in my letter June 22nd, your attendance at this investigation is at the request of Mr. Bradshaw, and so far as the Railway Company is concerned you will not be paid for time lost or expenses, however, it must be definitely understood that you must be present at the investigation, calling on your proper supervisor for relief if necessary.

"Please acknowledge receipt and understanding."

Both McLendon and Greer attended the hearing at Eden and filed the claims here involved.

The Carrier refused the claims on the basis that under the Agreement between the Organization and the Carrier it is definitely set out that Employees acting as witnesses for and at the request of other Employees will not be compensated by the Company for time lost and/or expenses incurred, citing Article V, Section 11(a) of the Contract. Further, that the Claimants were specifically advised in the notices that they were acting as witnesses for Conductor Bradshaw and would not be compensated for loss of time and expenses.

There is nothing in the record which shows any contract obligation or otherwise on the part of the Claimants to appear at investigations as witnesses for other Employees.

The Claimants in this instance appeared at the investigation only after protest and solely because of the letter of Trainmaster Baker in which he stated: "It must be definitely understood that you must present at the investigation." This in our opinion could be reasonably interpreted by the Claimants as a direct order to appear as witness at the investigation. Under the circumstances it is our opinion that the Claimants appeared at the investigation at the direct order the instructions of the Company and are entitled to be paid for loss of time and expenses.

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 Agreement has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 1st day of December, 1961.