

Award No. 11177
Docket No. MW-10657

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD
COMPANY**

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

(1) The Carrier violated the effective Agreement when it failed and refused to compensate Messrs. Oscar F. Miller, Jesse L. Miller, James E. Smith, Sr., Stanley Smith, Edward Mory and J. S. Coffey in conformance with the provisions of the second paragraph of Rule 43 for the time said employes were held in connection with "attending court or appearing as witnesses for the railroad and at the request of the Management, immediately . . . after the hours of their regular assignment" on March 25, 1957.

(2) Claimant J. S. Coffey be allowed two hours' pay at time and one-half rate and all other claimants named in part (1) of the claim each be allowed two and three-fourths hours' pay at their respective time and one-half rates.

EMPLOYEES' STATEMENT OF FACTS: Each of the Claimant employes are employed in this Carrier's Track Sub-department and their working conditions, rate of pay, etc. are controlled by and subject to the collective bargaining agreement between the two parties to this dispute.

Claimants Oscar F. Miller, Jesse L. Miller, James E. Smith, Sr., Stanley Smith and Edward Mory are regularly headquartered at Brewster, New York, while Claimant J. S. Coffey is regularly headquartered at Danbury, Connecticut.

* "All of the above men were notified March 22nd, they were to attend a hearing at our Law Office in New York and to report March 25, 1957, at their regular time and at their regular headquarters where, because of lack of train service, they would be picked up by truck and taken to a railroad station, where they would board a train for New York."

Rule 43 of the current Maintenance of Way schedule, was accepted by the Carmen as indicated by a lack of any further action on their part.

The employes involved in this dispute are regularly assigned trackmen at Brewster, New York, and Danbury, Connecticut. Their regularly assigned hours were from 7 A. M. to 12 Noon and from 12:30 P. M. to 3:30 P. M. These employes were taken away from their regular assigned duties to appear at an investigation in Grand Central Terminal. As evidenced by the record claimants were furnished transportation; were allowed expenses and were granted compensation equal to that of their regular assignment.

Carrier contends the first paragraph of Rule 43, by its very language, covers the circumstances existent in this dispute and it therefore falls squarely within the provision of the first paragraph of the rule. It follows claimants have been properly paid. The second paragraph of Rule 43 is not applicable.

Carrier submits the claim is without merit and should be denied.

All of the facts and arguments used in this case have been affirmatively presented to Employes' representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are not in dispute. Claimants were regularly assigned to work from 7:00 A. M. to 3:30 P. M. with one-half hour for lunch between 12 noon and 12:30 P. M. On March 25, 1957, they were ordered by the Carrier to attend an investigation at the Carrier's Law Department in New York City. They were picked up at their respective headquarters at 7:00 A. M. on that day and transported to New York. The investigation ended about 3:05 P. M. and they were transported back to their respective headquarters. Claimant Coffey was returned to his headquarters at 5:30 P. M. and the others to their headquarters at 6:15 P. M. Each of the Claimants was paid for eight hours at his applicable rate and each was given \$4.00 allowance for meals. Claimant Coffey claims additional two hours of pay at time and one-half and the others claim two and three-fourths hours of pay at their respective time and one-half rates.

Employes contend that the Carrier violated Rule 43 which states:

"Employes taken away from their regular assigned duties at the request of the Management, to attend court or to appear as witnesses for the railroad, will be furnished transportation and will be allowed compensation for each day equal to regular assignment, and in addition, necessary actual expenses while away from headquarters. Any fees or mileage accruing will be assigned to the railroad.

Employes attending court or appearing as witnesses for the railroad and at the request of the Management, immediately before or after the hours of their regular assignment will be paid for the time so held at the time and one-half rate with a minimum allowance of one hour.

If so used during lay off time and not continuous with, either before or after the regular day, or on days not regularly assigned to work, they will be paid for the time so held at time and one-half with a minimum allowance of two hours and forty minutes.

This rule will not apply to employes attending investigation of matters for which they are found at fault.

Particular emphasis is laid on the second paragraph of that Rule.

The Carrier states that the second paragraph of the Rule is not applicable in this dispute; only the first paragraph is controlling.

The first paragraph of Rule 43 specifically says that employes who are required to "attend court or to appear as witnesses" will be paid an amount equal to their regular assignment and will be furnished transportation. Claimants' regular eight hour assignments was from 7:00 A. M. to 3:30 P. M. They were paid for those hours.

The second paragraph must be read in conjunction with the entire Rule. It applies to employes who are required to attend court or appear as witnesses "immediately before or after their regular assignment." The Claimants did not attend court or appear as witnesses either before or after their regular assigned hours. Their attendance as witnesses ended about 3:05 P. M., about 25 minutes before their regular quitting time, after which they were transported to their respective headquarters.

Employes argue that Award 2032 (Shaw) applies to this dispute. We do not think so. In that dispute the Claimants actually attended an investigation for two hours after their regular quitting time and we properly held that they should be paid for those hours. Here, the employes did not "attend court or appear as witnesses" after 3:30 P. M., their regular quitting time. Had they remained in Carrier's Law Department for the investigation until 5:30 P. M., or 6:15 P. M., the principle enunciated in Award 2032 would have been applicable. But that is not the case. Time spent in transporting Claimants back to their headquarters after the investigation was finished is not intended to be covered under the second paragraph of Rule 43.

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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1963.