

Award No. 12387
Docket No. MW-11675

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

SEABOARD AIR LINE RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when it required vacationing Section Foreman W. E. McConnell to make out time and other reports on July 31, 1958 and failed and refused to allow Mr. McConnell compensation, in addition to his regular vacation pay, for services as rendered.

(2) Section Foreman W. E. McConnell now be allowed pay for two hours and forty minutes at his time and one-half rate, in addition to his regular vacation pay, account of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Claimant, who was regularly assigned to the position of Section Foreman on Section No. 27 qualified for and was accorded his annual paid vacation during the period from July 21 through August 8, 1958.

On Thursday, July 31, 1958, the claimant was required by carrier to interrupt his vacation and to make out time and other reports for himself and gang for the last half of July. For this work, the claimant showed a minimum call (two hours and forty minutes at his time and one-half rates) in addition to his regular vacation pay for himself on said time reports.

When the claimant received his pay check for the last half of July, he discovered that he was not paid for the minimum call. Consequently, the claimant complained to the Carrier's Division Auditor, in a letter reading:

"Vidalia, Ga.
August 16th, 1958

Mr. G. Parnell, D.A.
Savannah, Ga.

Dear Sir:

period. It has no application in the instant claim because claimant was released for vacation from July 21–August 8 and was not called back or assigned to perform any duties in connection with his assignment on July 31st.

Although the Board has consistently ruled that the burden of proof is on the one who asserts the claim, no evidence whatever was presented to substantiate the claim of Section Foreman McConnell. Nor was the claim even discussed with the Director of Personnel by the General Chairman although regular conferences are scheduled and held throughout each year for discussion of claims and grievances.

There is no merit to this claim and it should be denied.

OPINION OF BOARD: Claimant, W. E. McConnell, Section Foreman on Section No. 27, was accorded his annual paid vacation for the period from July 21 through August 8, 1958. As Section Foreman, his duties included making out payroll, time, and other reports for the gang under his supervision. On Thursday, July 31, 1958, he interrupted his vacation to prepare the payroll for the second half of July. For this work he requested a minimum call of 2 hours and 40 minutes of time and one-half rate in addition to his regular vacation pay. When he found that his paycheck for the last half of July did not include compensation for the minimum call, he made claim for payment in accordance with the provisions of Rule 8(h) (Section 1), of the Agreement.

Petitioner asserts in his Statement of Claim that Carrier required him to interrupt his vacation. Although Carrier requested him to furnish the source that directed him to return to work, this information was not supplied. There is no evidence in the record to support Claimant's allegation. Since the party making claim has failed in his burden of proof, we must deny the request for compensation.

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 was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1964.