

Award No. 16173

Docket No. CL-16177

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5928) that:

(a) The Carrier violated the Agreement when it ordered Mr. R. G. Powell, Desk Clerk, at Airline Junction Yard, Charlotte, North Carolina to be present at a formal investigation to be conducted in the office of Trainmaster, Greenville, South Carolina, 11:30 A. M., June 2, 1964, to determine responsibility for preparation of switch list Form 662-A, in violation of Superintendents Bulletin No. G-26, and then refused to compensate him for one day's pay and for expenses incurred in making the trip.

(b) Mr. Powell shall be compensated for one day's pay for Tuesday, June 2, 1964, and reimbursed for all actual expenses incurred in making the trip.

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the Claimant in this case holds position and the Southern Railway Company.

Mr. R. G. Powell, an employe of the Southern Railway Company was directed by Mr. J. D. Henley, Trainmaster, to be present at a formal investigation to be conducted in Trainmaster's office, Greenville, South Carolina, on Tuesday, June 2, 1964, at 11:30 A. M. to develop the facts and place responsibility concerning improper switch list Form 662-A covering set off of Extra 2560 North at Airline Junction May 28, 1964, which was allegedly in violation of Superintendent's Bulletin No. G-26, dated March 20, 1964 (Employees' Exhibit A).

Should an employe holding a regular assignment be held at other than his headquarters point on a specified holiday or an assigned rest day to attend court the following day, he will be allowed pay for one day at the pro rata rate of position to which assigned for each such day so held.

Any fees or mileage accruing will be assigned to the Carrier."

"RULE 40.

DISCIPLINE AND GRIEVANCES

(Revised, effective October 1, 1938.)

(a) Employes will not be discharged or disciplined except for cause. If request is made therefor within five days, an investigation shall be held. Investigation will be made by the proper officer within five days after date of request, if possible, and in their presence. They will have the privilege of bringing to such investigation one or more employes of their own selection to act as representatives, provided such employes are in good standing on their seniority district. Pending investigation employes may be relieved from service. **If found blameless, they will be paid for lost time.** If employe receives remuneration for services from Company and others during suspension or dismissal, only actual amount lost will be paid. If discharged or demerited, they will, upon written request, be furnished with a written statement giving cause.

(b) Employes feeling an injustice has been done them, or having a grievance, may always submit their case to their superior officer for consideration and review, and shall have the privilege of appealing to the next ranking officer, provided such appeal is made in writing within thirty (30) days after the reviewing officer has rendered his decision." (Emphasis ours.)

OPINION OF BOARD: Carrier made a groundless charge against Claimant and held an investigation on Claimant's rest day, requiring his presence at a place other than his headquarters. The record discloses that not only was Claimant blameless but that an investigation was not necessary as to him since the most cursory inquiry by Carrier would have disclosed that Bulletin No. G-26 with which it charged Claimant of violating, was not applicable to clerical employes such as Claimant.

Rule 38 provides for compensation and necessary expenses away from headquarters when an employe is called by Carrier to attend court or hearings as a "witness." Rule 40 (a) provides that an employe found blameless is paid for time lost. Rules 25 and 27 provide for two consecutive days off in seven and for compensation at the time and one-half rate for employes who are worked on more than five days in a regular work week. We have previously held that attending investigations is "service or work" within the meaning of the rules. See Awards 3967 (Fox), 3968 (Fox), 11222 (Sheridan), 14124 (Hamilton) and 15729 (Ives).

The record and facts of this docket clearly disclose that Claimant was in truth not a principal but was in fact a "witness" and was used as such by

Carrier. Clearly, the accusation against Claimant was nothing more than a naked subterfuge.

Accordingly, in view of all the facts and circumstances, we find that Claimant is entitled to be paid for attending the investigation as a witness for the Carrier and, as the investigation was held at other than Claimant's headquarters, he should be compensated under Rule 38, i.e., eight pro rata hours' pay as claimed and also the \$22.30 expenses incurred for a meal and auto mileage in making the trip on June 2, 1964.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of April 1968.