

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20830
Docket Number SG-20704

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway Company (Chesapeake District):

a) Carrier violated the current Signalmen's Agreement, particularly Rule 31, when on or about October 19, 1972, Claimant was summoned to appear in the Goochland Court as a witness for and/or in the behalf of the C&O Railway and Carrier later refused to allow compensation and necessary expenses in accordance with said agreement.

b) Carrier now allow Claimant J. C. Hughes, C&O ID No. 2211707, eight (8) hours at the Signalmen's rate of time and one-half; his mileage of 72 miles at nine (9) cents per mile; and \$3.00 for meals; or a total as follows:

8 hours @ time and one-half rate ...	\$63.28
72 miles @ .09 cents per mile	6.48
2 meals.....	3.00
Grand Total	\$72.76

General Chairman's File: 721230-148 Carrier File: SG-3247

OPINION OF BOARD: Claimant was subpoenaed to appear as a witness in a law suit brought by the owners of a dog concerning a collision involving one of Carrier's vehicles and said animal.

Carrier refused to compensate Claimant in accordance with Rule 31:

"RULE 31 - ATTENDING COURT

Employees taken away from their regular 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 equal to what would have been earned had such interruption not taken place, and in addition necessary actual expenses while away from headquarters. Men attending court or appearing as witnesses under this rule on days off duty will be allowed one day at time and one-half rate for each day so held or used, plus necessary actual expenses while away from headquarters. Any fees or mileage accruing will be assigned to the railroad."

Carrier's denial is based upon the allegation that it did not request or require Claimant to appear in court on the day in question. Further, Carrier relies upon the fact that Claimant had been on leave for a number of months prior to the court appearance.

The record shows that Claimant was on an active vacation status during the time in question. We feel that said factor, plus the general concepts stated in Award 15663 place Claimant in an eligible status. Thus, the dispute must be resolved on the issue of whether Carrier requested Claimant's presence in court.

There can be no question that the law suit was instituted against the Carrier, as defendant. Carrier states, at Pages 4 and 5 of its Response to Ex Parte Submission:

"This Carrier is required by law and the leasing company to maintain insurance coverage on all vehicles leased. The company with whom the carrier has had coverage is the Fidelity and Casualty Company of New York. Carrier notes that the Insurance Company is a complete and separate entity, apart and removed from this carrier in every respect other than being its insurance agent." (underscoring added)

Moreover, at Page 1 of the same document, Carrier concedes that Claimant's court appearance was in compliance:

"to a summons initiated by the lawyer representative of the Fidelity and Casualty Company of New York..."

We do not concur with the Carrier's conclusion as stated at Page 4 of its Rebuttal Submission:

"Attorney Watts was not and is not employed by this Carrier nor has he or does he represent the interest of this Carrier. Attorney Watts was employed by the Fidelity and Casualty Insurance Company to protect the Insurance Company's interest in the case being heard in the Goochland County Court on October 19, 1972. The Insurance Company stood to lose the amount of the claim unless it successfully defended against it. The Carrier, on the other hand, in no way stood to benefit from defense against the claim by Attorney Watts."

We feel that Carrier loses sight of the concepts of the law of agency. It is clear that Attorney Watts corresponded with Claimant, advising him of the date for court appearance, and that Claimant was subpoenaed to appear as a witness for the defendant in a case captioned "Mary C. Graham v. C&O Railway Co."

(emphasis added). While it may well be true that Watts was engaged by the insurance company; the Carrier concedes (as cited above) that said company is its agent. While it may also be true, as cited above, that the insurance company stood to lose the amount of the claim unless it successfully defended against it /the suit/ it must also be mentioned that the Carrier paid premiums for insurance coverage.

We do not have before us the precise terms of the policy of insurance, but absent any contrary indication of record, we must presume that the coverage not only indemnified Carrier against money damages, but also provided for legal defense of a suit - which appears to be the fact in the case at issue. The Carrier has paid for both indemnification and legal defense. Thus, action taken by the attorney for the insurance company (while actively defending a suit against Carrier) can only be taken in a representative capacity, and said attorney's act of requiring Claimant's attendance as a witness must be considered as a "request of the management."

Cases cited by Carrier are not dispositive of the issue presented in this dispute.

The record, as established on the property, contains a strong suggestion that the insurance company may have paid Claimant for mileage and expenses incurred. Although we sustain the claim, if, in fact, Claimant has received certain reimbursement from the insurance company concerning his October 19, 1972 court appearance, said reimbursement shall be deducted from the amount of the claim herein.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 violated.

A W A R D

Claim sustained to the extent stated in the Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1975.