

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21075
Docket Number CL-21192

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railway, Airline and
Steamship Clerks, Freight Handlers,
Express and Station Employees
{ Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, GL-7880, that:

(a) Carrier violated the Clerks' Agreement when it failed to compensate Mr. Harvey L. Johnson, Clerk-Telegrapher, Salisbury, North Carolina, for eight hours at pro rata rate for attending an investigation as a company witness outside his assigned working hours on Friday, November 16, 1973.

(b) Carrier shall be required to compensate Mr. Harvey L. Johnson for the difference between two hours and forty minutes at the rate of time and one-half and eight hours at straight time \$40.08 per day.

OPINION OF BOARD: Claimant was required to attend an investigation by Carrier as a witness, in a matter in which he had no personal responsibility. He appeared at the investigation at 11:00 A.M. and remained until the close of the hearing at 12:30 P.M. on Friday, November 16, 1973. Subsequently, on the same day, he worked his regular assignment 3:00 P.M. to 11:00 P.M. for which he received eight hours straight time pay. He also received pay for two hours and 40 minutes at time and one half (which is the "call" payment) for attending the investigation. Petitioner alleges that Claimant should have received eight hours pro rata pay for the time at the investigation rather than the "call", thus triggering this dispute.

Two rules are particularly relevant to this dispute; they provide:

" RULE G-2 -- CALLS

(a) Except as otherwise provided in these rules, employees called to perform work outside of established hours will be paid a minimum of two (2) hours and forty (40) minutes at time and one-half rate for two hours and forty minutes' work or less, additional time calculated on minute basis at time and one-half rate.

"(b) For work in advance of and which continues to starting time of regular work period, employees will be paid a minimum allowance of one hour at time and one-half rate for one hour or less, additional time calculated on minute basis at same rate.

* * *

RULE H-3 -- ATTENDING COURT, INVESTIGATIONS, ETC.

(a) Employees required by the Company to attend court, as a witness for the Company in connection with cases in which they have no personal responsibility, shall be paid the same compensation that they would have received had such interruption not taken place; if not regularly assigned, such payment shall be the minimum rate for their class of work. For such service on regularly assigned relief days, payment shall be at rate of time and one-half. This rule contemplates payment of a basic day for each day such service is required; no overtime payment will be made. All mileage and witness fees will be assigned to the Company. Necessary actual expenses while away from headquarters will be allowed.

(b) Employees required to attend an investigation or hearing in which they have no personal responsibility will be paid under this rule."

Petitioner argues that payment in this dispute is governed by Rule H-3 alone and Rule G-2 is not applicable, with particular reference to the language of Rule H-3 (b). In addition, the Organization has submitted instances of payments made previously for a full eight hours, in support of its position. Petitioner insists that the language of Rule H-3 which "....contemplates payment of a basic day for each day such service is required" mandates the payment of a full eight hours to Claimant for his service while attending the investigation. The Organization's position is summed up in its submission as follows:

"The Organization interprets Rule H-3 to mean that if an employe on duty is used as a Company witness, he will receive his regular pay for that day without any reduction. If an employe is used as a Company witness on a regularly assigned work day, but outside his assigned work hours he will receive eight hours pay at straight time regardless of the length of time involved in the investigation. If used as a Company witness on one of

"his regularly assigned rest days, he will receive eight hours at time and one-half. Under no consideration will the employe receive less than eight hours pay when serving as a Company witness in an investigation. There is absolutely no provision in the Agreement for an employe serving as a Company witness in an investigation to be paid under the Call Rule."

Carrier takes issue with Petitioner's point of view on several grounds. First, it is claimed that the history of Rule H-3 clearly demonstrates the intent to protect an employe from loss when required to lay off from his regular position in order to attend court or an investigation. Further in justification of its position, Carrier alleges that attending an investigation at Carrier's request is "work" or "service" and has been interpreted as such by a long series of Awards by this Board and other Divisions as well. On this theory, work before Claimant's regularly scheduled reporting time should be compensated as required by the work Rules (in this case Rule G-2) even though it was time spent at an investigation. Carrier also contends that Petitioner fails to consider the clear language of the Rule H-3 which provides in addition to the provision for a basic day's pay the phrase "no overtime payment will be made." Finally, Carrier takes issue with the prior settlements cited by Petitioner in that most of the settlements were made by local officers (having no precedential value) and further that the circumstances in most of those cases are not given.

We cannot credit the claim settlements cited by Petitioner as precedents in interpreting the Agreement. This Board has dealt with this issue on many occasions; in Award 14536, we said:

"The Organization in its submission to the Board lays stress on the fact the Carrier has settled and/or compromised similar claims on previous occasions. This Board, on any number of occasions, has held that offers of compromise and settlement and previous settlements of claims are not evidence of anything, and not admissible as evidence."

Petitioner's position then, must lie solely on its argument as to the meaning of Rule H-3; it has no other support. We do not view as reasonable the Organization's construction that under no circumstances will the employe receive less than eight hours' pay when serving as a Carrier witness in an investigation. Such an interpretation flies in the face of the phrase that no overtime payment will be made and also is contrary to the view long held by this Board that such activity must be construed as "work" under the rules of the Agreement. Since Petitioner has supplied no supporting evidence for its view and its argument is flawed, the Claim must fail.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Paulson*
Executive Secretary

Dated at Chicago, Illinois, this 19th day of May 1976.