Award No. 54
Docket No. 54

MOP File 380-1572
ORT File 1200

SPECIAL BOARD OF ADJUSTMENT NO. 117

ORDER OF RAILROAD TELEGRAPHERS
and
MISSOURI PACIFIC RAILROAD COMPANY

Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Railroad that:

1. Carrier violated the agreement between the parties when it failed to compensate V. F. Romay for services performed on his assigned rest day, January 17, 1955.

2. Carrier shall now be required to pay V. F. Romay 8 hours at the time and one-half rate for services performed on January 17, 1955.

OPINION OF BOARD: Claim is here made for 8 hours at the punitive rate for services allegedly performed on January 17, 1955, in connection with an investigation.

The claimant here was the regularly assigned occupant of a relief position with Sunday and Monday as assigned rest days. January 17, 1955, the date in question, was one of the aforesaid rest days.

The Organization contends that the claimant here performed service on this rest day when he was required by due notice to appear at the investigation and is entitled to compensation within the meaning of Rule 6, computed as provided in Rule 9, Section 1, paragraph II-A(1).

It was pointed out by the Organization that since the advent of the 40-hour week there can be no question that, within the meaning of the agreement, the service here performed by the claimant at the request of the Carrier was "work" as such.

The Carrier here took the position that the claimant was not entitled to compensation within the meaning of Rule 9, Section 1, paragraph II-A(1), since there was no work performed by the claimant on the date in question.

It was further pointed out that the claimant here was a principal at the investigation which was held to determine cause of and place individual responsibility for an incident which occurred on January 12, 1955.

The Carrier further asserted that Rule 6, here relied upon by the Organization, provides for payment only to those attending court or serving as witnesses in court proceedings, and that the investigation in question was not the type of proceeding contemplated in Rule 6.

The date in question was unquestionably a rest day for the claimant. His request that reparations be granted at the punitive rate for services performed by virtue of his requested attendance at the investigation must, of necessity,

stand or fall on Rule 6 of the effective agreement. Rule 6, in essence, provides that employes taken from their assigned duties at the request of the management to attend court or to appear as witnesses for the Carrier in court proceedings will be . . . allowed compensation equal to what they would have earned upon their regular position . . .

We are of the opinion that the question of whether or not this rule provides for pay for attendance by an employe at an investigation within the meaning of Rule 6 was correctly passed upon in Award No. 3230 involving the parties hereto, wherein it was held:

> "There is no rule of the agreement providing for pay for attendance by an employe at an investigation instituted by the carrier. Rule 6 provides for compensation and reimbursement for expenses when an employe at the request of the carrier attends court or appears as a witness for the carrier in court proceedings. Both sides, however, agree that this rule has no application here. To come within Rule 10(c) the attendance by this employe must be regarded as 'work' as that word is used in the rule.
>
> "This question has been discussed in a number of awards, which, though not uniform, have fairly consistently held that attendance at an investigation is not 'work' as that word is used in the rules. Awards 134, 1032, 1816, 2132, 2508, 2512.
>
> "The parties could have specifically provided by a special rule for payment for time spent while on such duty. The fact that there is no such rule may well indicate that they were unable to agree on this problem. Under such circumstances this Board is without power to intervene. We cannot write a rule on the failure of the parties to agree, nor should we by a forced construction apply another rule in a way in which they did not intend."

For the reasons herein above set out, we are of the opinion that this claim has no merit.

FINDINGS: The Special Board of Adjustment No. 117, 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 Special Board of Adjustment has jurisdiction over the dispute involved herein; and,

That the Carrier did not violate the effective agreement.

Award No. 54
Docket No. 54

AWARD

Claim denied.

SPECIAL BOARD OF ADJUSTMENT NO. 117

Livingston Smith - Chairman

C. O. Griffith - Employe Member

G. W. Johnson - Carrier Member

St. Louis, Missouri
August 9, 1956