



Award No. 15835
Docket No. CL-16159

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5930) that:

1. Carrier violated the Clerks' Agreement when it failed to properly compensate Claimants L. W. Copeland and W. L. Steele while attending investigation as a witness for the Carrier on April 27, 1965.

2. Carrier shall now be required to compensate Claimant L. W. Copeland for three and one-half hours at the time and one-half rate and Claimant W. L. Steele four hours at the time and one-half rate for service performed outside their respective daily assignments on April 27, 1965.

EMPLOYEES' STATEMENT OF FACTS: Clerks L. W. Copeland and W. L. Steele, (referred to hereafter as claimants) were regularly assigned Group 1 clerical employees on the Charleston Division of the Carrier. On April 24, 1965, Claimants were notified by letter from Trainmaster Cherry to arrange to attend as a witness an investigation to be conducted in the A. C. L. Freight Station, Columbia, S. C. 9 A. M., April 27, 1965.

The investigation was conducted to develop facts and establish responsibility as outlined in the letter of April 24 herein referred to and attached as Employees' Exhibit A.

Claimants attended the investigation as Carrier witness in accordance with the letter of instructions identified as Exhibit A and when they were not properly compensated, claim was filed with the Division Superintendent for proper payment of four hours at time and one-half to Claimant Steele and three and one-half hours at time and one-half for Claimant Copeland. Copy of the claim as filed is attached hereto and referred to as Employees' Exhibit B.

The claim was denied by Mr. T. D. Moore, Jr., Superintendent, under date of August 11, 1965, advising that claimants lost no time as result of attending investigation and claims were not sustained by the agreement. The decision of

the Superintendent denying the claim is attached hereto as Employees' Exhibit C.

Appropriate appeal was made to Mr. W. D. Quarles, Jr., Director of Labor Relations, the highest officer of the Carrier designated to handle disputes and following conferences and discussion, denied Claimant's claims under date of October 29, 1965, copy of decision attached hereto as Employees' Exhibit D.

On April 27, 1965, Claimant L. W. Copeland held a regular assigned position working 11 P. M. to 7 A. M. and Claimant Steele occupied a regularly assigned position working 7 A. M. to 3 P. M. April 27, 1965 was one of the work days of the work week of each of the Claimants regular assignment.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: While yarding Train No. 223 at Columbia, South Carolina, Trainman M. H. Stanton sustained personal injury on the morning of January 11, 1965. Clerk L. W. Copeland was on duty at that time and talked with Trainman Stanton on the radio just prior to the time the injury was sustained. Report of the personal injury was made to Mr. W. L. Steele, who had just begun his tour of duty as Relief General Yardmaster, and, acting in that capacity, he inspected the equipment involved.

Investigation in connection with the personal injury was conducted on April 27, 1965, and Clerks L. W. Copeland and W. L. Steele were required to attend as witnesses for the Carrier.

On that date Clerk Copeland's tour of duty, which began at 11:00 P. M. the night before, ended at 7:00 A. M., he attended the investigation from 9:00 A. M. to 10:30 A. M., and was paid for the eight hours spent on his assignment.

Clerk Steele was assigned to work 7:00 A. M. to 3:00 P. M. and he attended the investigation from 9:00 A. M. to 7:00 P. M., four hours beyond the time he would have gone off duty. He was paid for the two hours spent on his assignment from 7:00 A. M. to 9:00 A. M., and was allowed the six additional hours he would have earned if he had not attended the investigation, or a total of eight hours.

The claim was declined because the claimants lost no time and the agreement contains no rule which supports a claim for time spent outside of assigned hours acting as a witness for the Carrier at an investigation.

OPINION OF BOARD: Claimants were required to attend an investigation as witnesses on behalf of Carrier at Columbia, South Carolina on April 27, 1965. Claimant Copeland occupied an assignment with hours between 11:00 P. M. and 7:00 A. M. He attended the investigation from 9:00 A. M. to 10:30 A. M. and was paid for the eight hours on his regular assignment. Claimant Steele occupied as assignment with hours between 7:00 A. M. and 3:00 P. M. He attended the investigation from 9:00 A. M. to 7:00 P. M. and was compensated for eight hours of his regular assignment.

Petitioner claims an additional 4 hours pay at the overtime rate on behalf of Claimant Steele and 3 hours and 30 minutes at the overtime rate on behalf of Claimant Copeland for service performed outside their respective daily assignments on the date of claim.

The record discloses that the claim originally handled on the property failed to mention any rule violations. Carrier declined the claim on the property by letter dated October 29, 1965, which in part reads as follows:

"As advised in conference Clerks Steele and Copeland lost no time in attending this investigation. In the absence of any rule in the agreement to support their claim for time spent outside their assigned hours, in attending an investigation the above claim is denied."
(Employes' Exhibit D)

The entire correspondence on the property, as submitted by the Employees, is found in Employees' Exhibits A, B, C and D.

Petitioner has offered no evidence that any specific rules were considered or discussed on the property by the parties. Therefore, we must conclude that Petitioner for the first time in this dispute cited Rules 52(a), 53 and 54 in its appeal to this Board as supporting the claim for additional compensation on behalf of Claimants.

Carrier contends that the Board lacks jurisdiction to decide this dispute on the merits because nowhere in the handling of it on the property has Petitioner asserted that any rule or rules of the Agreement have been violated.

The jurisdictional issue here involved recently has been considered by us in several Awards, involving similar circumstances. (Awards 13741, 14081, 14118 and 15700.)

We find the following statement from our Award 13741 applicable in the instant dispute.

"When a respondent denies a general allegation that the agreement has been violated for the given reason that it is not aware of any rule which supports the alleged violation, the movant, in the perfection of its case on the property, is put to supplying specifics. It is too late to supply the specifics, for the first time, in the Submission to this Board—this because: (1) it in effect raises new issues not the subject of conference on the property; and (2) it is the intent of the Act that issues in a dispute, before this Board, shall have been framed by the parties in conference on the property.

Upon the record, as made on the property, we are unable to adjudicate the merits of the alleged violation. We will dismiss the Claim."

Accordingly, this claim must be dismissed.

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 upon the record made on the property we are unable to adjudicate the merits of the Claim.

AWARD

Claim Dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1967.