

Award No. 454

Docket No. 451

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

The Fourth Division consisted of the regular members and in addition Referee Felix L. O'Neill when award was rendered.

PARTIES TO DISPUTE:

RAILROAD YARDMASTERS OF AMERICA

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim that Yardmaster F. T. Corrigan, Spokane, Washington, be paid one day (eight hours) at time and one-half rate for September 6, 1947, his assigned rest day, account his being required to work on that day, attending investigation as witness for the Carrier in Superintendent's office at Spokane, Washington.

EMPLOYEES' STATEMENT OF FACTS: Yardmaster F. T. Corrigan was regularly assigned as Assistant General Yardmaster at Yardley, Washington, with assigned hours from 3:00 P. M. to 11:00 P. M., and with Saturday his regularly assigned rest day. He was required, by direction of a proper Officer of the Company, to attend an investigation at the office of the Assistant Superintendent, Spokane, Washington, at 11:00 A. M., Saturday, September 6, 1947, in which a Yardman was charged with violation of operating Rule 701.

Yardmaster Corrigan presented claim for a day's pay at rate of time and one half, under Rule 3 (a), which was declined.

POSITION OF EMPLOYEES: Scope Rule of the effective Agreement reads in part as follows:

"Rule 1 (a) Except as otherwise provided in this Agreement, the term "Yardmaster" shall include positions of General Yardmasters, Assistant General Yardmasters, Yardmasters and Assistant Yardmasters.

(b) Positions of General Yardmasters at Duluth-Superior, St. Paul, Minneapolis, Laurel, Yardley-Spokane, Pasco, Auburn, Seattle and Tacoma, do not come under the scope of this Agreement, it being understood and agreed that the rules of this Agreement do not apply to such positions."

Rule 3 (a) provides:

"Except as otherwise provided in this rule, one relief day off duty in seven will be designated for each regularly assigned Yardmasters' position. If the regular incumbent of such position is required to work on the designated relief day, he will be paid therefor at rate of time and one half."

Letter from Superintendent D. S. Colby, dated September 5, 1947, directing that Yardmaster Corrigan be present at the investigation on September 6th, is submitted as Exhibit "A".

Letter from Chief of Personnel H. W. McCauley, dated November 20, 1947, is submitted as Exhibit "B".

The exhibits fully substantiate the facts as outlined by the Employes and it is the position of the Employes that attendance at the investigation by direction of proper authority violated the sanctity of his rest day, depriving him of the benefits to be derived from the rest day rule, and constituted "work" within the meaning of the rule, for which payment accrues as provided therefor.

Support of this contention is provided by Fourth Division Award No. 417, the pertinent portions of which read as follows:

"The Carrier urges that the meetings do not constitute 'work' within the meaning of Rule 11 (a), and that employes should be compensated only when they lose time as a result of attending meetings.

It developed that the Carrier offered to pay Mr. Stimson three hours at straight time rate. The Union urges that this is an attempt by the Carrier to compensate him under a rule not applicable to the instant case.

As to this, the Carrier urges that this was not offered under any rule in the Agreement, but in view of a misunderstanding and the question of whether Mr. Stimson asked to be excused.

The Awards in this question are in conflict. However, in considering these cases, we believe that emphasis should be placed upon the purpose to be served. Here, it was a question of serving on a Safety Committee, a desirable feature in any enterprise, particularly railroads. Obviously such service benefits employes. But in the long run it is of more benefit to the Carrier. In our opinion, service on the Safety Committee was an important aspect of the duties of this employe. This being so, we believe it was a part of his work and that he should be compensated under Rule 11 (a)."

In view of the fact that in the case at hand, there was no mutual benefit or interest involved, benefit and interest being involved only on the side of the Carrier, the claim of the Employes is even more justified (if that be possible) than in the case covered by Award No. 417.

All data submitted in support of Employes' position have been presented to the Carrier and made a part of the particular question in dispute.

Claim should therefore be allowed.

Oral hearing is requested.

CARRIER'S STATEMENT OF FACTS: Mr. F. T. Corrigan is regularly assigned as Assistant General Yardmaster at Yardley, (Spokane) Washington, with hours of assignment from 3:00 P. M. to 11:00 P. M., Sunday to Friday, inclusive, with Saturday as his assigned rest day.

On Saturday, September 6, 1947, Mr. Corrigan attended an investigation in the Assistant Superintendent's office at Spokane. This investigation commenced at approximately 11:00 A. M., Saturday, September 6, 1947, and was completed at approximately 11:30 A. M. this same date.

Claim has been presented by Mr. Corrigan for payment of eight hours at time and one-half rate account attending the investigation at Spokane on Saturday, September 6, 1947, based on Rule 3 (a) of the current agreement between the Northern Pacific Railway and Railroad Yardmasters of America, effective March 1, 1945, reading:

"Except as otherwise provided in this rule, one relief day off duty in seven will be designated for each regularly assigned yardmaster's position. If the regular incumbent of such position is re-

quired to work on the designated relief day, he will be paid therefor at rate of time and one-half.

General Yardmasters at Staples, Dilworth-Fargo, Jamestown, Mandan, Glendive, Billings, Livingston, Butte, Helena, Missoula, Yakima and Everett, required to work on designated relief day will be allowed a day's pay at pro rata rate."

POSITION OF CARRIER: The issue in this case is whether Rule 3(a) of the Yardmasters' Agreement effective March 1, 1945 sustains the claim of Assistant General Yardmaster F. T. Corrigan for payment of eight hours at time and one-half rate account attending an investigation on September 6, 1947. Rule 3 (a) has been quoted by the Carrier in its Statement of Facts.

The material provisions of Rule 3 (a) insofar as the case covered by this docket is concerned is that sentence reading:

"If the regular incumbent of such position is required to work on the designated relief day, he will be paid therefor at rate of time and one-half."

The subject matter of this sentence is "work" performed by a regular assigned yardmaster on his rest day. Therefore, the crux of this dispute is whether work performed is synonymous with attending an investigation.

The word "work" as used in Rule 3 (a) contemplates work of the type to which an employe is regularly assigned and does not comprehend attending an investigation.

The Employes in the negotiation of the current Yardmasters' Agreement recognized that attending an investigation is not synonymous with work performed as that term is used in Rule 3 (a). The current Yardmasters' Agreement which became effective March 1, 1945 was the result of notices served on the Carrier on July 7, 1943 and September 28, 1943 by the Yardmasters' Organization for changes in the previous agreement.

The notice of September 28, 1943 for changes in the Yardmasters' Agreement was accompanied by a proposed set of rules. This proposal contained the following rule appearing under the caption "Hours of Service:"

"A yardmaster who works on his regularly designated rest day will be paid therefor at double the regular rate."

This proposal also contained the following rule appearing under the caption "Time Allowances:"

"Yardmasters subjected to investigation, attending investigations or performing any other service outside of their regular tour of duty, will be compensated therefor at the rate of one day's pay on each occasion."

The Yardmasters' Organization in presenting the proposal on September 28, 1943 recognized a distinction between work performed on rest days and attending investigations on such days. The Organization requested one method of compensation to yardmasters required to work on their regular assigned rest days and requested another method of compensation to yardmasters attending investigations outside their regular tour of duty. Had the term "work" included attending an investigation the Organization would not have found it necessary to request a specific rule covering attending investigations.

The Carrier declined to agree to the proposed rule covering attending investigations and the current Yardmasters' Agreement does not now contain a rule covering this subject. At no time has the Carrier agreed with the Organization that a yardmaster attending an investigation is performing work within the meaning of Rule 3 (a).

The proposition that the word "work" as used in Rule 3 (a) contemplates work of the type to which an employe is regularly assigned is amply demonstrated by reference to other sections of Rule 3, which rule is captioned "Relief Day." Rule 3 (b) refers to working more than one relief day within a seven-day period, and Rule 3 (c) refers to the establishment of regular assigned relief positions. Rule 3 (d) refers to extra yardmasters working in the place of regular assigned yardmasters. These rules read:

"Rule 3 (b). The relief day shall attach to the position and not to the individual, it being understood, however, that a yardmaster will not be paid at overtime rate for more than one relief day worked within any seven day period.

(c) Where relief day requirements regularly provide six days' work in seven, regularly assigned relief yardmasters' positions may be established and yardmasters assigned to such relief positions will take the rate of pay, starting time and working conditions of positions relieved.

(d) An extra yardmaster working in the place of a regularly assigned yardmaster for more than six consecutive days will take the rate of pay, starting time, working conditions and relief day of the regularly assigned yardmaster's position upon which he performs service.

An extra yardmaster relieving other yardmasters on their relief days or who performs yardmaster's service on more than six consecutive days on two or more yardmaster's position will be paid straight time rate for regular tour of duty on days worked."

It is perfectly plain, therefore, that the word "work" as used in Rule 3 (a) comprehends work generally recognized as that attaching to a yardmaster's position. Attending an investigation is not generally recognized as work as that word is used in Rule 3 (a). Consequently, a yardmaster attending an investigation on his rest day is not subject to the application of Rule 3 (a).

The Employes in the presentation of this dispute to this Division are attempting to secure through the medium of an award a rule to cover attending investigations, and also are attempting to secure a greater compensation for attending investigations than they themselves sought in the negotiation of the current agreement. This Division is without authority to render an award that will have the effect of writing a new rule.

The Carrier has shown that the current Yardmasters' Agreement does not contain a rule covering compensation for attending investigations; that Rule 3 (a) establishes a method of compensation for work performed on the designated relief day by a regular assigned yardmaster; that a regular assigned yardmaster attending an investigation is not performing work within the meaning of Rule 3 (a); and that Mr. Corrigan on September 6, 1947 in attending an investigation did not perform work on that date within the meaning of Rule 3 (a). This claim should, therefore, be denied.

All data in support of the Carrier's position in connection with this claim has been presented to the duly authorized representative of the Employes, and is made a part of the particular question in dispute.

Oral hearing is desired.

OPINION OF BOARD: F. T. Corrigan, claimant, was employed by Carrier as Assistant Yardmaster at Yardley, Washington. On the 6th day of September 1947, this being a rest day for claimant, he was required, by the Carrier, to attend an investigation held at the office of the Assistant Superintendent at Spokane, Washington. He was in attendance from 11:00 A. M. until 11:30 A. M. Claimant contends that because of services rendered the Carrier on one of his rest days he is entitled to a full day's compensation at the rate of time and one-half.

The Carrier denies the claim and contends there is nothing in the rules granting pay for attendance at investigations; that attendance at investigations called by the Carrier is not work as contemplated by the agreement.

The Board cannot write rules, but its duty is to interpret the rules of the agreement, and the problem here is one of interpretation. Rule 1, Sections (a) and (b), designates the parties who are bound by the agreement. Rule 3, Section (a) provides: "If the regular incumbent of such position (yardmaster) is required to work on the designated relief day, he will be paid therefor at rate of time and one-half."

It is conceded that the claimant was required to attend the investigation. Whether that attendance was work is a matter for interpretation and we are of the opinion that it was work. As to the amount of compensation claimant is entitled to, we believe that is determined by that part of Rule 3, Section (a) quoted above, "he will be paid therefor at rate of time and one-half" for the day.

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

The carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

AWARD

Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: R. B. Parkhurst
Secretary

Dated at Chicago, Ill., this 21st day of May, 1948.