Award No. 567

Docket No. 535

NATIONAL RAILROAD ADJUSTMENT BOARD

FOURTH DIVISION

The Fourth Division consisted of the regular members and in addition Referee Angus Munro when award was rendered.

PARTIES TO DISPUTE:

RAILROAD YARDMASTERS OF AMERICA

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim and request of the Railroad Yardmasters of America that—

(1) Claim of W. R. Chatman, "OA" Tower, Cincinnati, June 1, 1946, claiming two hours' pay at time and one-half account being required to attend meeting in Train Master's office on June 1st—Regulation 4-A-3.

(2) Claim of J. P. Cooper, Yardmaster, June 1, 1946, for an additional day at punitive rate, Regulation 4-C-1 (b) account attending meeting in office of Train Master.

(3) Claim of J. C. Donahue, Yardmaster, May 31, 1946, for two hours at time and one-half account attending meeting in Committee Room, Court Street, 7:30 P. M. at request of Assistant Train Master Godshall, Regulation 4-A-3.

EMPLOYES' STATEMENT OF FACTS: Claimants in this case were, by direction of a proper Officer of the Carrier, required to attend meetings scheduled outside their regular assigned hours of duty, namely 7:30 P. M. May 31, 1946, and 10:00 A. M. June 1, 1946, for the purpose of receiving instructions relating to the duties of a Yard Master. In the case of Yardmaster Cooper, June 1 was his regular assigned relief day.

POSITION OF EMPLOYES: Joint Submission covering the handling of this case on the property, dated December 11, 1946, is submitted as employes' exhibit "A". Submitted as exhibit "B" is denial of the General Manager dated February 27, 1947. It is to be noted that the Carrier is relying on Fourth Division Award No. 304 to support their denial in this Case.

Rule 4-A-3 on which the employes rely reads as follows:

> "A regularly assigned Yardmaster notified or called to perform work, and reporting for such work, between his regular work periods and not continuous therewith, shall be paid on the actual minute basis at the rate of time and one-half with a minimum of two (2) hours at the time and one-half rate computed from the time he reports for such work."

Rule 4-C-1 (b) reads:

"A Yard Master who is required to work on the relief day of the position to which he is regularly assigned shall be paid at the rate of time and one-half."

It is the position of the employes that attendance at the meetings referred to was work within the meaning of the Rules and should be paid for accordingly. In the Opinion of the Board in Award No. 304 to which the Carrier referred, we find the following:

"If it had been the intent of the parties to include in the terms of Rule 4-A-3 the claim that is now made, it would have been written therein."

The employes direct attention to Fourth Division Award No. 309 covering claim that—

"Yardmaster V. W. Smith be paid two hours at the overtime rate account performing work between his regular work periods on each of two days, November 19, 1944, and November 22, 1944, in accordance with provisions of Rule 4-A-3 of the effective Agreement."

As the Board was advised, withdrawal of the claim was the result of the claim having been allowed by the Carrier. This in itself indicates

"the intention of the parties"

as referred to in Award No. 304.

Furthermore, this intention was actually incorporated into Rule 4-A-3, effective June 1, 1947, by the addition of the following paragraph:

"(b) Telephone or other calls on a Yardmaster between his regular work periods, and not continuous therewith, for the purpose of obtaining information, instructions or advice, shall be considered 'work' within the meaning of Section (a) of this Rule (4-A-3)."

In Fourth Division Award No. 417, we find the following:

"The awards on 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 a 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 the instance case, attendance at meetings such as are here involved was for a purpose of benefit directly and solely to the Railroad and not to the employes.

In Fourth Division Award No. 454, we find in the OPINION OF BOARD:

"It was conceded that the claimant was required to attend the investigation. Whether that attendance was work is a matter of interpretation and we are of the opinion that it was work."

The claimants were required in the instant case to attend the meeting in question and did therefore perform work within the meaning of the rule.

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

This claim should be allowed.

Oral hearing is requested.

CARRIER'S STATEMENT OF FACTS: A communication dated October 20, 1948, from the Secretary of the National Railroad Adjustment Board, Fourth Division, to the General Manager of the Western Region of the Pennsylvania Railroad Company, contains the information of receipt of notice

from the Railroad Yardmasters of America advising that they will file an ex parte submission in the claim of W. R. Chatman, J. P. Cooper, and J. C. Donahue.

This letter indicates that W. R. Chatman, J. P. Cooper, and J. C. Donahue claim an unadjusted dispute is pending between them and the Pennsylvania Railroad Company, referred to therein in the form quoted at the beginning of this submission.

All of the Claimants in the instant case are employed as Yard Masters at Cincinnati, Ohio, on the Carrier's Cincinnati Division. On May 31, 1946, Yard Master Donahue, whose regularly assigned tour was from 7:00 A. M. to 3:00 P. M. at McCullough Yard, Cincinnati, with relief day on Sunday, was required to attend a meeting held by the Train Master in his office at Court Street, Cincinnati.

Donahue reported at the Train Master's office at 7:30 P. M. and attended a meeting conducted by the Train Master. This meeting consisted of a discussion of safety, operating problems and instructions from the Train Master in matters relating to the conduct of yard operations. The meeting was concluded at 9:30 P. M. Donahue lost no time from his regular assignment as a result of attending the meeting.

The circumstances in the case of Cooper and Chatman were similar to those related above, except that they were required to attend a meeting held by the Train Master between 10:00 A. M. and 12:00 Noon on Saturday, June 1, 1946. Cooper and Chatman likewise lost no time from their regular assignments as a result of attending the meeting. In the case of Cooper, however, the meeting occurred on his assigned relief day.

On behalf of the Claimants, the General Chairman of the Railroad Yardmasters of America presented to the General Manager a request for compensation of two hours each for Donahue and Cooper at the time and one-half rate under the provisions of Rule 4-A-3 of the applicable Agreement on account of attending said meetings, and in the case of Cooper claim was presented for payment of a day's pay at the time and one-half rate under the provisions of Rule 4-C-1 (b) of the applicable Agreement on account of attending meeting on his relief day.

The General Manager denied the claims because it has always been the practice to require Yard Masters to attend such meetings from time to time without compensation and the Agreement makes no provision for payment as claimed.

Therefore, so far as the Carrier is able to anticipate the basis of the claim, the question to be determined by your Honorable Board is whether, under the Agreement between the parties to this dispute, the Carrier is required to allow the Claimants compensation under the provisions of Rules 4-A-3 and 4-C-1 (b), because they were required to attend a meeting held by the Carrier outside of their regular working hours.

POSITION OF CARRIER: A. The Pennsylvania Railroad Company asserts that the National Railroad Adjustment Board, Fourth Division, is without authority or jurisdiction to proceed in the matter above entitled and referred to, and protests against and objects to any proceedings herein whereby such National Railroad Adjustment Board, Fourth Division, shall assume or undertake authority or jurisdiction therein for the reasons that:

(1) The Pennsylvania Railroad Company asserts that it has not received due and proper notice of the claim made against it in the above entitled matter, in that it has not been informed of the grounds and nature of said claim with sufficient particularity to enable it to answer and defend itself therefrom, which notice and information are required by Section 3, First, subsection (j) of the Railway Labor Act and by the Fifth Amendment to the Constitution of the United States, and protests against and objects to any proceedings therein by the National Railroad Adjustment Board, Fourth Division, unless and until the Carrier has been given full and

specific information as to the claim made against it by the above named persons and adequate opportunity to answer and defend the same.

B. The Pennsylvania Railroad Company, being denied by the rules and practices of the said National Railroad Adjustment Board, Fourth Division, the right to be served with a copy of Claimants' submission setting forth the grounds and nature of said claim in order to enable said Railroad Company adequately and properly to answer the same, and said Railroad Company having been put in a position by such denial where it must either undertake to file this answer without knowledge of the actual nature and grounds of said claim or else submit to having said claim decided against it by said Board by default, does hereby to the best of its knowledge and ability under the circumstances submit this answer to what it supposes by way of anticipation such claim to be, reserving all objections, or the right at any time, to make the same, as to the above mentioned dispute, or any proceedings therein, and without waiving any objections that it has or may have to the validity of the Railway Labor Act or to the validity or regularity of any acts or proceedings of the National Railroad Adjustment Board, Fourth Division, in said matter.

C. The Pennsylvania Railroad Company specifically objects to the jurisdiction of said National Railroad Adjustment Board, Fourth Division, in said matter because so far as said Railroad Company has been able to determine or is able to anticipate, the claim in the above entitled matter is not based upon the interpretation or application of the applicable agreement covering rules, rates of pay, and working conditions, but, on the contrary, amounts to an attempt to secure, by means of an award from the National Railroad Adjustment Board, Fourth Division, a new and different agreement from the one which covered the rules, rates of pay, and working conditions of the Claimants then in effect.

The Carrier will show that:

I. There is an Agreement between the parties to this dispute governing the rules, rates of pay and working conditions of Yard Masters.

II. Under this Agreement the Carrier is not required to allow the Claimants the additional compensation claimed.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Fourth Division, is required to give effect to the said Agreement and to decide the present dispute in accordance therewith.

Each of the points of the Carrier's Position will be discussed in the order set forth above.

I. There is an Agreement Between the Parties to this Dispute Governing the Rules, Rates of Pay, and Working Conditions of Yard Masters.

The Pennsylvania Railroad Company has entered into an Agreement with its Yard Masters and Assistant Yard Masters through their duly designated and authorized representatives which covers the rules, rates of pay, and working conditions of the said classes of employes. This Agreement is known as the "Agreement Governing Rates of Pay and Working Conditions of Yard Masters and Assistant Yard Masters" effective April 16, 1944. Copies of this Agreement are on file with the National Railroad Adjustment Board, Fourth Division.[1]

The Claimants in this case are members of the classes referred to, and their rates of pay and working conditions are covered by the aforesaid

[1] This Agreement has since been superseded by another Agreement, effective June 1, 1947.

Agreement. Consequently, in order to sustain their claim in this dispute, they must show that this Agreement on its face or as interpreted by the parties thereto provides that under the circumstances of this case the Carrier is required to allow them the additional compensation claimed.

II. Under this Agreement the Carrier is Not Required to Allow The Claimants the Additional Compensation Claimed.

As set forth above in the Statement of Facts, the Claimants were required to attend meetings conducted during their off-duty period by their supervisory officer, the Train Master. These meetings were devoted to instruction and general discussion of problems affecting Yard Masters. It has been the practice for the Train Master to hold such meetings from time to time with Yard Masters for many years.

The claim for compensation for Chatman and Donahue in this case is based upon the provisions of Rule 4-A-3 of the Agreement. Rule 4-A-3 reads as follows:

> "4-A-3. A regularly assigned Yard Master notified or called to perform **work**, and reporting for such **work**, between his regular work periods and not continuous therewith, shall be paid on the actual minute basis at the rate of time and one-half with a minimum of two (2) hours at the time and one-half rate computed from the time he reports for such **work**." (Emphasis added.)

Thus, Rule 4-A-3 provided compensation for Yard Masters who "perform **work**" between their regular work periods. Attendance at the meetings herein involved was not "work" as that term is used in Rule 4-A-3. Rule 4-A-3 was obviously intended to apply to situations in which Yard Masters are called in their off duty periods to perform work of the character to which the employes are regularly assigned under the Agreement, and not to special requirements such as attending a meeting to receive instructions and information from their supervisory officers.

The claim for compensation for Cooper in this case is based upon the provisions of Rule 4-C-1 (b) of the Agreement, because the attendance at the meeting was on the Claimant's relief day. However, the principle involved is no different from that of Chatman and Donahue. It is obvious that in holding a meeting with a number of Yard Masters and Assistant Yard Masters, there is always liable to be someone present whose relief day falls on the meeting day. Where the relief days of the yard supervisory force cover all of the days of the week, such a situation could only be avoided by holding a number of small meetings. The purpose of the meeting is best served, however, when the maximum number of employes are brought together to exchange their views and expressions.

Rule 4-C-1, under which Cooper's claim was presented, reads as follows:

> "4-C-1. (a) One regular relief day each week, designated by the Company, shall be assigned to each position. Consistent with requirements of the service, due regard shall be given to the preferences of the regular Yard Masters, in seniority order, in fixing relief days for their positions.
>
> (b) A Yard Master who is required to **work** on the relief day of the position to which he is regularly assigned shall be paid at the rate of time and one-half. An extra Yard Master who is required to **work** on seven (7) consecutive calendar days as a Yard Master shall be paid time and one-half for the service performed on the seventh day.
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> (c) Not less than three (3) days' notice shall be given to the Yard Master affected when a permanent change is made in the designated relief day of a position." (Emphasis supplied.)

It will be noted that paragraph (b) of Rule 4-C-1 refers to work. The attendance at the meeting was not "work" as that term is used in Rule 4-C-1. Rule 4-C-1 has the same meaning with respect to the use of the term "work" as Rule 4-A-3, discussed above.

It is to the interest of all Yard Masters that they keep qualified for their jobs, and it is necessary in doing so, that they meet occasionally with the Train Master and Assistant Train Master for discussion of instructions, rules, etc., pertaining to Yard Masters' work, which can be more readily assimilated in such meetings than by the mere reading of the written word. The practice of officers conferring with their subordinate supervisory employes in this manner is as old as the railroad itself and heretofore no question has ever arisen as to compensation therefor. The two meetings were arranged so that an opportunity would be afforded for men from all tricks to be present.

In presenting these claims to the General Manager, the Employes contended that the term "work" as used in Rules 4-A-3 and 4-C-1 included attendance at meetings, which the Carrier has discussed above. The Employes further contended that the meetings were unnecessary and that instructions received could have been sent by letter or given over the telephone. We think little or no comment is needed upon this contention. It has been demonstrated by long experience that these meetings are the best means of educating and instructing Yard Masters in the duties and responsibilities of their work.

Finally, the Carrier desires to call attention to Award No. 304 of your Honorable Board. The case involved in Award No. 304 arose on The Long Island Rail Road under the same Agreement as involved in the instant case. In Award No. 304 the request for compensation under Rule 4-A-3 by reason of Yard Masters attending meetings was denied and it was stated:

> "If it had been the intent of the parties to include in the terms of Rule 4-A-3 the claim that is now made, it would have been written therein. Some coverage is provided by the agreement for investigation and court proceedings, but only to the extent of time lost by reason thereof, and compensation for time which is not shown as "lost time" is impliedly denied.
>
> Our purpose is to interpret the contract and not to remake it by adding to or subtracting therefrom. * * *."

Award No. 304 is clearly applicable to the instant case and warrants rejection of the claims of Yard Masters Chatman, Cooper and Donahue.

Attention is also directed to the fact that since Award No. 304 was issued the parties have entered into a new Agreement, effective June 1, 1947, which makes no provision with respect to payment to Yard Masters for attendance at meetings. Furthermore, in the discussion of rules to be included in the new agreement, the Employes made no request upon the Carrier for such a rule.

The question involved in the instant case is what the parties have agreed to in connection with such matter, and whether such agreement has been violated. The Carrier submits that there is no provision in the Agreement which requires that the Claimants be compensated for time spent attending the meetings, and Rules 4-A-3 and 4-C-1 providing for payment of "work" were never understood or agreed to between the parties as requiring payment in instances such as involved herein. This is clearly supported by the practice following ever since the first Agreement was negotiated between the Carrier and its Yard Masters, which was effective February 1, 1940, and by Award No. 304 of your Honorable Board.

The Carrier submits, therefore, that the claim of the Employes is not supported by the provisions of the applicable Agreement and should be denied.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Fourth Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Fourth Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claims of the Employes in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has established that under the applicable Agreement the Claimants are not entitled to the additional compensation claimed.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claims of the Employes in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employes, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same. Oral hearing is desired.

All data contained herein have been presented to the employes involved or to their representative.

(Exhibits not reproduced.)

OPINION OF BOARD: Railroad Yardmasters of America, hereinafter styled organization, filed this claim on behalf of three (3) employes of The Pennsylvania Railroad Company, hereinafter styled carrier.

Carrier notified its employe Donahue to attend a meeting commencing at 7:30 P. M. on May 31, 1946, which meeting 'consisted of a discussion of safety, operating problems and instructions from the Trainmaster in matters relating to the conduct of yard operations.' This meeting was at a time other than the regular assigned hours of work of said employe and he attended.

Carrier notified its employes Chatman and Cooper to attend a meeting called for similar purposes on June 1, 1946, at 10:00 A. M. and both employes attended. This meeting was held at a time other than during the regular assigned hours of work with respect to employe Chatman and was on the relief day of employe Cooper.

With reference to the claim filed herein the organization maintains Rule 4-A-3 of that certain Agreement negotiated by and between organization and carrier and effective April 16, 1944, is applicable as regards employes Chatman and Donahue.

The purpose for which such meetings were called by carrier is unquestionably a benefit to the employes. No doubt they welcome the opportunity to learn how to more efficiently perform their duties and thereby enhance the possibilities of promotion.

It may also be said such meetings benefit the carrier in that as a result of increased efficiency on the part of its employes it is but furnishing to its patrons that type of service patrons are entitled to receive when they engage its services.

May this Board say that the required attendance of employes Chatman and Donahue at the meetings they attended constituted 'work' within the meaning of Rule 4-A-3? By reason of carrier's stated purpose of the meetings this Board believes it should answer the question in the affirmative. Rule 4-C-1 (b) considers that type of 'call' cases other than the type governed by Rule 4-A-3. Considering the purpose of the meeting employe Cooper was required to attend this Board believes that attendance constituted 'work' within the meaning of said Rule. The Board then must apply the clear and unambiguous meaning of such Rule with reference to the rate of pay Cooper is entitled to receive.

It is accordingly ordered by the Board that the claim and request in all respects be and it is hereby sustained.

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

The carrier and the employes 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 and request sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: R. B. Parkhurst
Secretary

Dated at Chicago, Illinois, this 18th day of August, 1949.