

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

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

PARTIES TO DISPUTE:

RAILROAD YARDMASTERS OF AMERICA

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the Railroad Yardmasters of America that:

Claim for one (1) day's pay at rate of time and one half for Yardmaster W. C. Stinson account being required to attend Safety First meeting on his regularly assigned rest day.

EMPLOYES' STATEMENT OF FACTS: Yardmaster W. C. Stinson was a regularly assigned Yardmaster, 3:00 P.M. to 11:00 P.M., and was required to attend a Safety First meeting at 10:00 A.M., March 15, 1946, which day was his regularly assigned rest day.

Rule 11 of the effective Agreement provides as follows:

"(a) Regularly assigned Yardmasters will be allowed one rest day each week. If a regularly assigned Yardmaster is required to work on his regularly assigned weekly rest day, he will be paid extra at time and one-half rate therefor."

POSITION OF EMPLOYES: It is not within the power of management to violate the sanctity of a relief day by requiring that a Yardmaster attend any meeting or perform any service without recognizing that such attendance or performance of service be compensated for under the provisions of the rest day rule. It is accepted without question that relief day privileges are for the sole benefit of the employes and action by management in requiring that an employe hold himself available for or actually attend any such meeting is working within the meaning of the rule and constitutes a violation of rest day rights and privileges and specifically of Rule 11, above quoted, and an employe so affected should be compensated thereunder.

Attention is directed to Fourth Division Award No. 309, Docket No. 312, which though withdrawn from consideration by the Board, covered request that a Yardmaster be paid under a call rule on account of being called on telephone at home during periods in which he was not on duty, for advise, information and instruction. Refusal of the carrier involved to concede that such telephone calls for advice, information and instructions constituted work on the part of the Yardmaster called, within the meaning of the rule, resulted in the case being presented to the Board. Reconsideration by the carrier and payment of the claims resulted in the case being withdrawn from the jurisdiction of the Board.

In other words, the carrier admitted that the Yardmaster "worked" when he gave the requested information and instructions from his residence by telephone to the Clerk at the yard office. Certainly, therefore, a Yardmaster "works" when, on his assigned rest day, he is required to change his plans for his rest day and, instead, attend a meeting called by the management.

The carrier recognizes its obligation in this case by the following letter from its Vice President Mr. Parish to General Chairman Powell:

"This refers to your letter of June 15, and discussion with your general committee on September 19 and 20, with regard to claim of Yardmaster W. C. Stinson at Richmond, Virginia, for one day at time and one-half rate for March 15, 1946, account attending a safety meeting on his weekly rest day.

"As explained in the conference, safety meetings are a co-operative thing and it has always been the practice to compensate employes for actual time lost when they have to lose time to attend safety meetings. As pointed out in the conference, Stinson lost no time.

"There is some question, however, as to his being required to attend the meeting, and to give Stinson the benefit of any doubt which may exist, we are willing to pay him three straight time hours for March 15, 1946, it not being possible at this time to tell just how much time he devoted to attending the safety meeting, with the understanding that such disposition is not to prejudice or influence the handling of any other cases which may arise.

"If you are agreeable to disposing of this case on that basis, please show your acceptance in the space provided on this letter and return it to us, so that necessary arrangements may be made accordingly."

We submit, however, that the call rule is not involved for the reason that this happened on Mr. Stinson's rest day, therefore the rest day rule 11 is involved.

Opinion of the Board in Third Division Award No. 2905, in interpreting a rest day rule reading as follows:

"A regularly assigned dispatcher required to perform service on the rest day assigned to his position will be paid at the rate of time and one-half,"

contains the following opinion:

"According to its literal import a regularly assigned dispatcher is entitled to time and one-half for any work which he may be required to perform for the carrier on any of his regularly assigned days of rest."

We submit that the required attendance of Yardmaster Stinson at a safety meeting on March 15, 1946, his regularly assigned rest day, constituted work within the meaning of the rest day rule.

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: The Richmond Terminal Safety First Committee, which is comprised of officers and employes from the various crafts at Richmond Terminal, met at the Railroad Y.M.C.A., Richmond

Virginia, at 10:00 A.M., Friday, March 15, 1946. W. C. Stinson, who is regularly assigned as Yardmaster at Richmond, Virginia, from 3:00 P.M. to 11:00 P.M., and is a member of the Safety Committee, attended the Safety Meeting on Friday, March 15, his regular weekly rest day. The meeting lasted approximately 1 hour and 45 minutes.

POSITION OF CARRIER: The claim for compensation in this case is based upon the provisions under the first paragraph of Rule 8, reading:

“When required to perform service other than regular duties, the rate will be not less than regularly assigned pay for days so used.”

and Rule 11(a), reading:

“Regularly assigned yardmasters will be allowed one rest day each week. If a regularly assigned yardmaster is required to work on his regularly assigned weekly rest day, he will be paid extra at time and one-half rate therefor.”

This Rule 8 provides compensation for yardmasters who are “required to perform service” other than their regular duties. This was obviously intended to apply to situations where yardmasters are required to perform service other than actual yardmaster service.

Rule 11(a) provides compensation for yardmasters who are “required to work” on their regularly assigned weekly rest day. Quite obviously this rule was designated to cover situations where regularly assigned yardmasters are required to actually work a yardmaster position on their regularly assigned weekly rest day.

The Safety Committee is comprised of officers and employes from the various crafts at Richmond Terminal. Meetings are held bi-monthly for cooperative purposes. The practice of holding such safety meetings is of long standing. It has been and still is the practice of the carrier to compensate employes for straight time lost when attending safety meetings. In this case, however, the employe lost no time and, therefore, is entitled to no compensation. Appointments to the Safety Committee are made by the Division Superintendent for a period of one year and those not desiring to serve are not required to do so. Appointments to membership on the Committee are made on a rotating basis in an effort to avoid requesting a member to serve consecutive terms.

The purpose of the meetings is to promote the safety of employes through discussions, suggestions, reports and formulation of safety rules. Of course, the railroads benefit from these meetings but primarily a member of such a committee represents his fellow employes for the purpose of improving safety conditions.

As previously pointed out, the carrier, as matter of practice, compensates for straight time lost when attending safety meetings. It is the understanding of the carrier that no request was made by Yardmaster Stinson to be excused from the Safety Meeting on the day in question and while it is not admitted in any way that he is entitled to compensation, nevertheless, under the circumstances, the carrier did offer Stinson compensation for three hours straight time which is all to which a claimant would have been entitled had a claim been based upon Rule 3(c) (attending investigations) or Rule 4(b) (calls).

When consideration is given to the facts, it is clearly evident that the contention of the Committee is not supported by any rule, practice, or precedent, established in the operation of the agreement.

The carrier submits, therefore, that the claim of the employes is not supported by the provisions of the applicable agreement and should be denied.

All evidence introduced in this submission has been previously discussed in conference or by correspondence with representatives of the employes.

Oral presentation is desired.

OPINION OF BOARD: The Carrier has established a Safety Committee comprised of officers and employes from the various crafts at its Richmond, Virginia, Terminal. Meetings are held every two months.

Pursuant to a notice of March 8, 1946, a meeting of the Committee was called to be held on March 15. The notice stated in part:

* * * *

“There must be no failure to attend this meeting, except in case of emergency.

* * * *

“Employes losing time account of attending this meeting will be reimbursed therefor.

* * * * ”

One of the employes on the Committee was W. C. Stinson, a Yardmaster, whose day of rest fell on March 15. There was some evidence that Mr. Stinson protested the necessity for being required to attend the meeting, although the Carrier urges that attendance at the meetings was voluntary and that Stinson could have been excused if he so desired. In view of the wording of the notice and other evidence, we are of the opinion that Mr. Stinson attended the meeting in the belief that he was required so to do.

The meeting lasted for one hour and a quarter. The Union now asks that Mr. Stinson be compensated at time and one-half, on the basis of the following rules in the Agreement between the parties, effective November 1, 1945.

“When required to perform service other than regular duties, the rate will be not less than regularly assigned pay for days so used” (Rule 8, first paragraph).

* * * *

“Regularly assigned yardmasters will be allowed one rest day each week. If a regularly assigned yardmaster is required to work on the regularly assigned weekly rest day, he will be paid at time and one-half rate therefor.” (Rule 11(a)).

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. Stinson 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. Stinson asked to be excused.

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 the 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).

The claim in this case should be allowed.

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

The claim in this case should be allowed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: R. B. Parkhurst
Secretary

Dated at Chicago, Ill., this 9th day of October, 1947.