

PUBLIC LAW BOARD NO. 3640

PARTIES) RAILROAD YARDMASTERS OF AMERICA
TO)
DISPUTE) SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM:

"Claim of Atlanta Yardmaster G. L. Landers for eight hours pay at the yardmasters pro rata rate for attending investigation as company witness August 16, 1982." (Carrier File: YM-220)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

By letter dated August 10, 1982, Claimant was notified that he was going to be a witness at a company investigation to be held at 10:00 AM on August 16, 1982. Following receipt of the letter Claimant requested and was given permission to mark off from his regular assignment (11:00 PM to 7:00 AM) on the day preceding the scheduled hearing, or, namely, August 15, 1982, to attend the investigation. Claimant thereafter attended the investigation on August 16, 1982, which, for purposes of consideration, had lasted less than four hours.

Petitioner contends that Claimant is entitled to eight hours pay for the loss of work on August 15, 1982. Basically, it argues: 1) Carrier cited Claimant to be a witness; 2) Carrier had granted Claimant a leave from work for the specific purpose of attending the investigation; and, 3) the claim is for the amount Claimant lost as a result of an interruption to his work schedule that was created by the Carrier. The Organization also questions how it may be considered that Claimant should have worked all night on the third shift, sat around three hours waiting for the company hearing to commence, and then remain alert and answer questions under cross-examination. It says such a Carrier demand is not only untenable, but absolutely absurd, and should be disregarded.

Carrier has denied the claim on the basis that there was no need for Claimant to have marked off his regular assignment to attend the investigation. It says that the time at the investigation did not conflict with the hours of Claimant's working assignment and that Claimant was not subject to or covered by the Hours of Service Law.

Despite its denial as above, in conference on the property, the

Carrier allowed Claimant four hours at the pro rata rate, saying it was being allowed in keeping with Rule 14(B) of the Schedule Agreement. It has continued to deny the balance of the claim for the additional four-hour payment.

Rule 14, Attending Court, reads:

"(a) Employees taken away from their regular assigned duties, at the request of the Management, to attend court or to appear as witnesses for the Company, will be furnished transportation and will be allowed compensation equal to the amount that would have been earned had such interruption not taken place and, in addition, the necessary actual expenses while away from home. Any fee or mileage accruing will be assigned to the Company.

(b) Yardmasters attending, as witnesses, investigations in which they are not concerned, will be paid in same manner as though attending court as witnesses for this Company. If no time is lost, they will be allowed pay for the actual time attending such investigation on a minute basis with a minimum of four (4) hours."

In this Board's view, since Claimant had specifically requested and been granted permission by Carrier to mark off in connection with his required attendance as a witness at a company hearing, we believe he is entitled to be made whole for the loss of the entire day's earnings in application of Rule 14(A), supra. In this respect, it is recognized that Claimant was taken away from his regular assignment at the request of management and that had no interruption taken place he would have been entitled to a full day's pay.

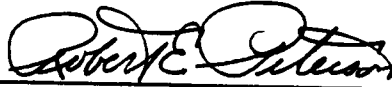
Rule 14(b), supra, as cited by Carrier in defense of payment of but four hours compensation, makes reference to situations in which a yardmaster was not required to have lost any time. Here, Claimant lost an entire work day.

In the Board's opinion, if the Carrier had reason to believe that there was no need for Claimant to have marked off for the day for the purpose of being a witness, then it should have told him so either at the time it directed him to arrange to be present as a witness or when he thereafter submitted his request to mark off to an agent of the Carrier. In not having done so, it must be held that Carrier assumed a responsibility to make Claimant whole for the loss of any compensation sustained as a result of interrupting his regular work assignment to be at the company hearing as a witness.

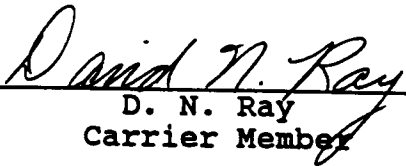
Under the circumstances of record, the claim will be allowed and we will direct that Claimant be granted an additional four hours compensation at the pro rata rate of pay.

AWARD:

Claim sustained to the extent set forth in the above Findings.



Robert E. Peterson, Chairman
and Neutral Member



D. N. Ray
Carrier Member



W. C. Stokes
Organization Member

Norfolk, VA
February 17, 1989