

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

With Referee Nicholas H. Zumas

Award 23 198

Docket 43 062

PARTIES (Brotherhood of Locomotive Engineers
TO (
DISPUTE (
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: "Case No. 72-86:

"Claim of Engineer L. E. McGee for time and one-half for holiday Ticket No. 4, dated September 4, 1972."

FINDINGS: The First Division of the National Railroad Adjustment Board, upon the whole record and all the evidence, finds that the parties herein are carrier and employe within the meaning of the Railway Labor Act, as amended, and that this Division has jurisdiction.

Hearing was waived.

The essential facts are not in dispute. Claimant was regularly assigned as Yard Engineer at Hamlet, North Carolina, working seven days per week. Claimant worked his assignment on Sunday, September 3, 1972, as well as the holiday, Monday September 4, 1972. He did not perform any service on his assignment on Tuesday, September 5, 1972, because of being called for jury duty. Claimant was paid at the straight-time rate for service performed on the holiday, and was paid under the jury service rule for compensation lost on the day following the holiday on which he was called for jury duty. Claimant contends that he is entitled to be paid at time and one-half for the work performed on the holiday.

Carrier takes the position that Claimant did not qualify for holiday pay because he was not available for work the day following the holiday.

Article 45 (c) provides, in pertinent part:

"To qualify for holiday pay, a regularly assigned employee referred to in Paragraph (a) hereof must be available for or perform service as a regularly assigned employee in the classes of service referred to on the work days immediately preceding and following such holiday, and if his assignment works on the holiday, the employee must fulfill such assignment. However, a regularly assigned employee whose assignment is annulled,

cancelled, or abolished, or a regularly assigned employee who is displaced from a regular assignment as a result thereof on (1) the work day immediately preceding the holiday, (2) the holiday, (3) on the work day immediately following the holiday; will not thereby be disqualified for holiday pay provided he does not lay-off on any of such days and makes himself available for service on each of such days ~~excepting~~ the holiday in the event that the assignment does not work on the holiday..."

It is assumed that Claimant would have worked on Tuesday, September 5, 1972 had he not been called to perform jury duty. The question involved herein is whether he was "available" under the rule to be entitled to the holiday pay.

The Board is of the opinion that the claim must be sustained.

While it is technically correct, as Carrier asserts, that Claimant could not have worked and the reasons for not working were not within Carrier's control, nonetheless, Claimant was prevented from performing work by virtue of his requirement to perform a civic duty. Carrier and the Organization recognize such a civic responsibility by making provision that employees will be compensated at their same basic rate less the amounts paid by the government entity for service on the jury.

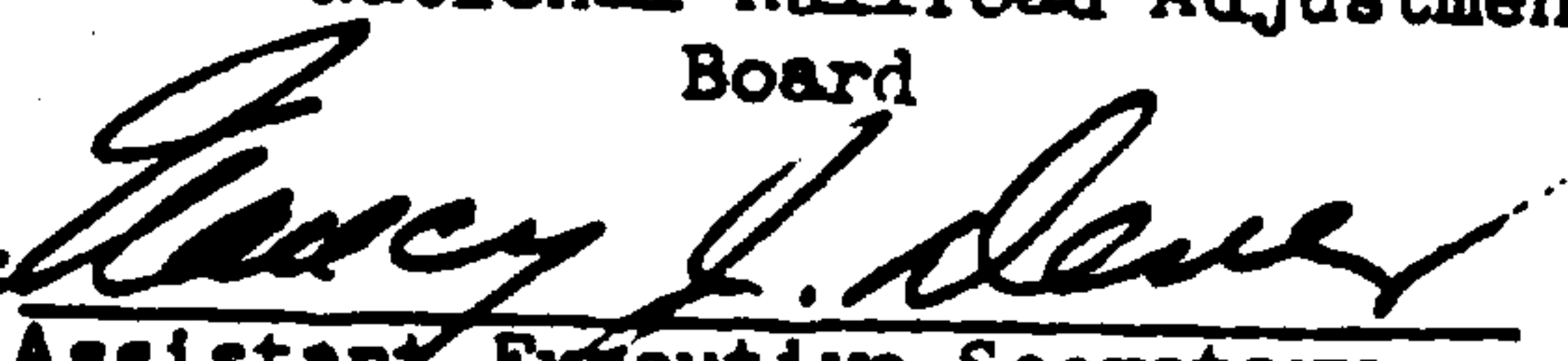
The Board recognizes that there are numerous awards that apply the language of Article 45 very narrowly, and have denied awards in situations that did not involve jury duty commitments. However, it appears to this Board that jury duty is an exceptional situation. Simply put, an employee should not be penalized for complying with the law.

AWARD: Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
BY ORDER OF FIRST DIVISION

DATED AT CHICAGO, ILLINOIS
THIS 21st DAY OF March 1980

ATTEST: Executive Secretary
National Railroad Adjustment
Board

By: 
Assistant Executive Secretary