

Award No. 3150

Docket No. 2972

2-AT&SF-EW-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97. RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Electrical Workers)**

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1—That under the current Agreement Electrician Gerald E. Menges was unjustly dealt with when the Carrier refused to compensate him for service performed in accordance with their instructions on Sunday, October 14, 1956.

2—That accordingly, the Carrier be ordered to compensate Mr. Menges for four (4) hours at his applicable time and one-half rate of pay for service performed on Sunday, October 14, 1956.

EMPLOYEES' STATEMENT OF FACTS: Electrician Gerald E. Menges, hereinafter referred to as the claimant, is employed by The Atchison, Topeka and Santa Fe Railway System, hereinafter referred to as the carrier, in Shop Extension Department Electrical Forces.

The claimant is one of a number of electricians employed by the carrier in this department, is assigned to install and maintain electrical equipment at various points on the carrier's property (Western Lines) and is compensated on a monthly basis.

Electricians in the Shop Extension Department, including the claimant, are assigned to a work week of Monday through Friday, with Saturday as a stand-by or subject to call day and Sunday as the assigned rest day.

On Sunday, October 14, 1956, the claimant traveled from La Junta, Colorado, to Pueblo, Colorado, for the purpose of taking an examination for a city license, upon instructions of Electrical Foreman G. J. DeBaun. See

“The employes are of the opinion that a portion of the expense incurred to obtain this license is, within fair reasoning, an obligation of the Carrier as well as a requirement of the Agreement.”

In this particular case, carrier realized that the possession of a license by Lead Electrician Menges to perform electrical work within the city limits of Pueblo, required by the ordinance, was of benefit to both the claimant and the carrier, therefore, the personal expenses incurred by him were allowed; also the license fee was paid by the carrier. The carrier stood the **entire expense** in order that the claimant could take the examination and obtain the license. The claimant was not put to any expense whatever.

Carrier asserts that time spent taking examinations, such as the one here in dispute, is not considered “work” within the meaning of the agreement rules, as there was no “service” performed for which compensation was due.

Carrier also asserts, that the employes’ claim is without support of the agreement rules; that there is no rule, and the employes have not cited any, requiring payment for time taking examinations such as the one here in dispute. Carrier respectfully requests that the employes’ claim in this dispute be denied.

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

The carrier or carriers and the employe or 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.

Parties to said dispute were given due notice of hearing thereon.

We have consistently held that employes required to take tests are not performing work or service under the rules. Even though they are inconvenienced thereby we cannot sustain a pay claim in the absence of a rule providing compensation for time so spent.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of March, 1959.

DISSENT OF LABOR MEMBERS TO AWARD 3150

There is no exception in the applicable rules of the controlling agreement to justify the majority’s conclusion that the instant service performed for the carrier by the claimant on his rest day should not be paid for under the provisions of Rule 7(j) which provides:

“Service rendered by an employe on his assigned rest day . . . will be paid for under Rule 7-d. . . .”

The record reveals that claimant could have been assigned to Pueblo any day during his assigned work week, but the carrier chose to send him on his rest day and the rule requires that he be compensated for such service.

For the foregoing reasons we are constrained to dissent from the findings and award of the majority.

R. W. Blake

Charles E. Goodlin

T. E. Losey

Edward W. Wiesner

James B. Zink