

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

Parties to Dispute: { System Federation No. 117, Railway Employees'
Department, A. F. of L. - C. I. O.
(Carmen)
Western Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Western Pacific Railroad Company violated the controlling agreement when they instructed Carman C. J. Chrisman to report for an eye fitting for safety glasses on his rest day.
2. That Carman C. J. Chrisman was called out and should have been paid four (4) hours.

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 waived right of appearance at hearing thereon.

Claimant J. Chrisman, a carman, reported for an eye glass fitting for safety glasses on his rest day. He came in for this fitting in response to a notice posted by carrier. Notice reads as follows:

"Oroville, Ca.
Sept. 2, 1977

Safety Glasses

On Sept. 7 at 10 a.m. there will be an eye doctor here to fit eye glasses to every one who has not got theirs.

Everyone in the diesel and car departments will be required to have them. One hour will be paid to the afternoon and midnight shift to have theirs fitted. Also men on their days off.

B. L. Coggin,
Car Foreman
R. L. Sheoard,
Diesel Foreman"

Claimant interpreted this bulletin as an order to report on his rest day for the examination. He reported as ordered and subsequently submitted a time claim for four hours at straight time rates. He cited as authority for this claim Rule 7C, which reads: "Employees called or required to report for work and reporting but not used, will be paid a minimum of four (4) hours at straight time rates."

Carrier denied the claim, arguing that Rule 7C does not apply in this instance. Claimant was not called to perform any work as required in Rule 7C.

The question to be answered by this Board is whether claimant, by appearing on his rest day for an eye examination in response to carrier's posted notice, was called or required to report to work as that language is traditionally applied.

With few exceptions, it is well settled in the railroad industry that any activity occurring during time in which the employee is directed by the carrier must be considered work or service. Two universally accepted exceptions enunciated by this Board in numerous awards are time spent for the primary benefit of the employee and time when mutuality of interest exist (the so-called benefit theory).

In the instant case, both of these exceptions apply. The fitting of safety glasses must be considered a definite benefit to employees. Further, it is of benefit to both the Carrier and the employee. Employees are protected from eye injuries and the possible loss of sight; carrier is protected from lost time resulting from employee injuries, as well as possible law suits when employees are injured on the job.

Further, this Board has issued awards that have defined work to be compensated under such pay rules as Rule 7C as work usually and traditionally performed by the craft of which the employee is a member. Reporting for eye glasses to be fitted is not included in Rule 112, which delineates duties and responsibilities of carmen. Absent contract language on the issue, this division's previous awards on the subject must prevail.

A W A R D

Claim denied. Claimant, however, should receive one hour of reporting pay, if it has not already been paid.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary

National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 24th day of October, 1979.