

Award No. 1427
Docket No. TE-1362

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Royal A. Stone, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of the General Committee of the Order of Railroad Telegraphers, Pennsylvania Railroad, that O. W. Landis is entitled to ten hours time at time and one-half rate, as compensation for time spent travelling to and from Medical Examiner's Office at Columbus, Ohio, December 18, 1939, and his assigned position at Bradford, Ohio, account instructed to take a medical re-examination on his assigned relief day."

EMPLOYEES' STATEMENT OF FACTS: "O. W. Landis holds regular assignment as Block Operator, at 'BF' Block Station, Bradford, Ohio, on the Columbus Division, with tour of duty from 7:00 A. M. to 3:00 P. M. daily except Monday, rate 79½¢ per hour.

"Mr. Landis was due for periodic examination in color sense, sight, hearing and physical condition, and, under date of December 11, 1939, the Division Operator—Assistant Train Master, addressed the following letter to Mr. Landis:

'You are due for regular periodic examination in color sense, sight, hearing and physical condition on Monday, December 18, 1939. Please present yourself to the Medical Examiner at Columbus, Ohio, between the hours of 9:00 A. M. and 4:00 P. M. on Monday, December 18, 1939.

For your convenience we will arrange to stop train No. 108 at Bradford, December 18, 1939, to pick you up, and train No. 11 at Bradford, December 18, 1939, to let you off.

RD-45 Form is attached hereto.'

"Because he was required to report for periodic examination in color sense, sight, hearing and physical condition on his assigned relief day, Mr. Landis filed claim for pay for ten (10) hours at the over-time rate applying to his regular assignment, that is, for compensation from the time he left Bradford on Train No. 108 on December 18, 1939, until he returned to Bradford on Train No. 11, December 18, 1939. This claim was denied.

"Medical Examiners are available on the Columbus Division as follows for the purpose of examining employees in color sense, sight, hearing and physical condition:

Location	Days on which office is open	Hours during which office is open
Columbus—	Mon. to Fri. Inc.	8:30 AM to 12:00 Noon.—1:30 PM to 6:00 PM
	Saturday	8:30 AM to 12:00 Noon.
Richmond—	Tues. & Thurs.	9:00 AM to 12:00 Noon.—1:00 PM to 2:00 PM
Indpls. —	Monday	8:30 AM to 12:00 Noon.—1:30 PM to 4:00 PM
	Wed., Fri. & Sat.	8:30 AM to 12:00 Noon.

his re-examination on December 18, 1939, his assigned relief or off duty day, and respectfully requests your Honorable Board to dismiss the claim of the employe in this matter.

"The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimant, with the right to test the same by cross examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same."

OPINION OF BOARD: This claim is for supposed violation of Rule 4-B-4, which assures the claimant "one regular relief day each week." If that were all of the contract on the subject the claim could be sustained. The trouble is that there are other and controlling provisions which require its denial.

The concluding sentence of 4-B-4 assures compensation at the stated rate to "an employe required to work on the relief day." This claimant did not **work** on the relief day in question. As will be shown later, he was serving himself rather than the carrier.

All else aside the claim must be denied under 4-M-1 reading thus:

"4-M-1. Employes required to report for re-examination will be paid their straight time rate for actual time lost, except that employes who have been properly notified and lose time due to failure to report at the time arranged shall not be paid for time lost."

The phrase "actual time lost" obviously means time lost in such manner as to deprive the employe of the wage he otherwise would have earned. Putting it another way, it means pay for time lost from his regular assignment, his work on which has been interrupted.

That is the view taken by the Pennsylvania Railroad Telegraphers' Reviewing Committee in its Decision No. 4. That decision denied a claim of block operator Creeley for 3 hours' pay lost while taking a rule examination which was conducted in the evening and outside of the hours of his assignment. The position of the General Manager was that "Regulation 4-M-1 provides compensation only for time lost. The term 'time lost' as used in the Regulations is ordinarily considered as contemplating inability of employe to fulfill his assignment." The decision of the Telegraphers' Reviewing Committee was this: "Position of General Manager sustained."

Whether, for this case, that decision should end the matter, because it was an interpretation of 4-M-1, now binding on the parties pursuant to the contract, is not decided. But see Award 233, Third Division, Lloyd K. Garrison, Referee.

Precedent and other authority quite aside, it seems that claims of this kind overlook the fact that employes, in qualifying themselves for positions and keeping themselves qualified, and to achieve promotion, are serving themselves primarily. Only in a secondary sense are they serving the carriers. It is suggested that the claimant in this case was required to travel an unusual distance on his own time. If so, the fact is regrettable but not determinative. What was wanted was a certificate of fitness by a competent oculist, one upon whom the carrier could rely for efficient work. In requiring an examination, it was but obeying the paramount authority of the Ohio statute cited in the argument. Its failure of compliance would have been criminal.

Implicit in the argument for the claim is the thesis that the employer is bound to pay employes for time spent in taking an examination, even though, as here, it is a biennial affair. Carried to its logical conclusion, that view would entitle employes to pay for time and effort spent in learning rules.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That there has been no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of May, 1941.