

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Thomas F. McAllister, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY**

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers, Atchison, Topeka & Santa Fe Railway, that R. B. Cuntz is entitled to four days' time at the scheduled hourly rate of his regularly assigned position at Hillside, Arizona, because that amount of time was necessarily lost by him in carrying out instructions of his employer to report at Los Angeles, California, for physical reexamination by the carrier's Medical Department."

EMPLOYEES' STATEMENT OF FACTS: "An agreement bearing effective date of December 1, 1938 is in effect between the parties. Copies thereof are on file with the National Railroad Adjustment Board.

"R. B. Cuntz is regularly assigned as agent-telegrapher, Hillside, Arizona, rate of pay 78¢ per hour, having seniority on that division (Albuquerque) since April 1, 1923. He has previous service on the Los Angeles Division.

"Superintendent O. L. Gray (letter March 1, 1940) instructed Mr. Cuntz to report to the A. T. & S. F. Hospital at Los Angeles for check-up examination during the six-month period following December 15, 1939, or be considered as disqualified for further service (letter March 28, 1940). Mr. Cuntz lost four eight-hour days, viz., May 8th, 9th, 10th and 11th, 1940 in complying with instructions.

"Dr. W. A. Morrison is Chief Surgeon for the Santa Fe Coast Lines Hospital Association, of which Mr. Cuntz is a member and to which he contributes a stipulated sum each month. Dr. Morrison is also chief surgeon for the Railway Company."

POSITION OF EMPLOYEES: "Article III (d) of the Telegraphers' Agreement reads:

'Employees will not be required to suspend work during regular hours or to absorb overtime.'

and, Article XVII (a) employs the following language:

'Regularly assigned employees will receive one (1) day's pay within each twenty-four (24) hours according to location occupied or to which entitled, if ready for service and not used, or if required on duty less than the required minimum number of hours as per location, except on Sundays and the designated holidays.'

such employees in its service. Certainly the Carrier can not be expected to assume additional expense in its efforts to extend the employees' period of gainful employment. Is it the desire of the Organization that the Carrier discontinue its previous efforts to retain such employees in service? The Carrier firmly believes that the answer is, as it should be, in the negative.

"The Carrier has not been served with a copy of the employees' submission; consequently it is not informed with respect to the alleged facts, contentions and/or allegations which the employees' ex parte submission may contain. The Carrier, therefore, has dealt only with the contentions and/or allegations heretofore presented to the Carrier by the employees and such other matters as in its considered judgment are pertinent to the dispute. The Carrier, however, reserves the right to submit evidence in rebuttal of any alleged facts, contentions and/or allegations made by the employees in their ex parte submission, or to any other submission which the employees may make to your Honorable Board in this case."

OPINION OF BOARD: R. B. Cuntz, regularly assigned as agent-telegrapher on the Los Angeles division of the carrier, was given leave of absence from April 6, 1927, to September 7, 1927, on account of sickness, diagnosed as tuberculosis. He was given further leave of absence from November 23, 1928, to December 15, 1929, for the recurrence or the illness. Later he applied to transfer to position as agent-telegrapher at Hillside, Arizona. On February 22, 1937, while employed by the carrier, he was disqualified in the periodical physical examination, due to evidences of the old tuberculosis, but was allowed to continue in service, subject to recheck of physical examination within one year. A year later a recheck authorized continuance in service. On December 14, 1939, Mr. Cuntz presented himself for examination and was disqualified on account of evidence of the old illness, but retained in service, subject to recheck within six months by the chief surgeon of the carrier at Los Angeles.

Claimant made arrangements for the recheck, and on May 7, 1940, at the close of work he was relieved, and arrived in Los Angeles the morning of May 8. It appears that, after a physical recheck, claimant requested X-rays of his teeth and was not released from the hospital until the afternoon of May 10, returning to Hillside the afternoon of May 11 and going back to work on May 14. He makes claim for pay for four days' time. There is considerable confusion in the evidence and, while we conclude that he is entitled to two days' time, the claim must be returned to the parties for ascertainment of whether the additional two days claimed were necessary for the physical examination, or for plaintiff's own purposes of having his teeth X-rayed and awaiting the result thereof.

Our conclusion that claimant is entitled to two days' pay is based upon Article 17 (a) of the Telegraphers' Agreement, which provides:

"Regularly assigned employees will receive one (1) day's pay within each twenty-four (24) hours, according to location occupied or to which entitled, if ready for service and not used, or if required on duty less than the required minimum number of hours as per location, except on Sundays and the designated holidays."

Article 3 (d) of the Telegraphers' Agreement provides:

"Employees will not be required to suspend work during regular hours or to absorb overtime."

There is no evidence that Mr. Cuntz was not ready for service but, on the contrary, that he was performing his duties when he was requested to submit to a recheck of physical examination. In Award No. 605, Docket No. TE-593, a telegrapher-Clerk was instructed by the Superintendent to proceed from Clarkdale, Arizona, to Drake, Arizona, to contact the examination car for physical examination and return to Clarkdale. The employee

made claim for time and overtime, which he claimed was consumed in making the trip. The Board held that he was entitled to a day's pay, but not to overtime.

While in Award No. 605, the employe who was required to take a physical examination was compensated for lost time, he was not compensated for overtime in traveling to and from the place of examination. The claim in that case was based on rules granting overtime for work performed after the regular day's employment. The Board held that more time than required for a day's employment, consumed in going to and from the physical examination, was not work and that claimant could only be compensated on the basis of time lost from employment. That is all claimant is asking in the instant case. The claim for two days' pay should be sustained and the complaint remanded to the parties for further handling as to the two additional days claimed.

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 the claim for two days' pay is sustained and the complaint remanded to the parties for further handling as to the two additional days claimed.

AWARD

Claim sustained for two days' pay and remanded to the parties for further handling as to the two additional days for which pay is claimed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of May, 1941.